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ABSENTEE.

1. A curator *ad hoc* has no right to consent to submit the case in which he was appointed to the court for decision in vacation. *Clacor* v. *Lane*, 499.

2. Where a person who is a joint obligor removes from the State, he may be sued with his coöbligor by the appointment of a curator *ad hoc* to represent him. *Jelks* v. *Smith et al.* 674.

ABSENT HEIRS.

See SUCCESSIONS.

ACQUETS AND GAINS.

See HUSBAND and WIFE.

ACTS AUTHENTIC AND SOUS SEING PRIVÉ.

See EVIDENCE.

ACTION.

See PRACTICE.

ADMINISTRATOR.

See SUCCESSION.

AGENT.

See MANDATE.

ANSWER.

See PRACTICE, PLEADING.

APPEAL.

I. *Parties.*

1. Unless all the parties interested be cited or appear in the appellate court, the appeal will be dismissed. *Lobdoll, tutrix,* v. *Lobdell et al*, 174.

2. Where three married women were appellants, and the appeal bond is signed only by the husband of one of them as principal, the appeal will be dismissed upon motion. *Wood et al.* v. *Tucker Wall et al.* 179.

II. *Bond and Surety.*

3. When the appeal bond is not sufficient in amount to authorize a suspensive appeal, but is good for a devolutive appeal, the appeal will not be dismissed, but the plaintiff may take out execution if the bond be not sufficient in amount to stay it. *Marshall* v. *Grand Gulf Railroad Company*, 360.

4. The surety on an appeal bond is liable for whatever judgment may be rendered against the principal, although the judgment of the court of the first instance may be reversed in part in the Supreme Court; and such surety may be proceeded against by motion under the act of 20th of March, 1839, amending the Code of Practice. *Holmes & Swanwick* v. *Steamer Belle Air and Owner*, 523.

5. The plaintiff in proceeding against a surety on an appeal bond, is not obliged to have the execution against the principal made returnable at the longest period prescribed by law. It may be returnable in the shortest legal delay. *Ib.*

6. Sureties on an appeal bond are entitled to the benefit of a division, when they have specially asked for it in their answer, unless the plea be met by proof of the insolvency of the co-sureties. *Ib.*

7. A person against whom the sheriff holds two executions, to satisfy which he cannot find property, is not a sufficient surety on an appeal bond. The fact that he is named as surety in the order of appeal, does not prevent the other party from objecting to him. *Squier* v. *Stockton*, 741.

III. *Motion to Dismiss.*

8. The appellant is in time if he file the transcript within three days after the return

day indicated in the order of appeal. *Bouligny* v. *White*, 31.

9. In a devolutive appeal, where no inconvenience or injury to the appellee is alleged from the delay, an appeal will not be dismissed on account of the delay in giving the appeal bond, if the bond was filed before the expiration of the three days allowed for filing the record of appeal after the return day had expired. *Ib.*

10. Where the sale of property seized on execution is enjoined, the plaintiff in execution must be cited, or the suit will be dismissed. *Ib.*

11. An appellant may be relieved where he has been prevented by circumstances beyond his control from filing the record in the appellate court in due time.

12. But when his counsel had made an arrangement with the clerk of the court in the first instance to file all the appeals taken by him, the clerk of that court becomes the agent of the appellant, and his neglect is that of the appellant. C. P. art. 585. *McDowell & Peck* v. *Read et al.* 42.

13. And if the record of appeal be not filed in due time, the appeal must be dismissed. C. P. arts. 589, 590 and 883. *Ib.*

14. Where there is no citation of appeal the appeal must be dismissed. *Pratt* v. *Erwin*, 115.

15. An appeal made returnable at Opelousas on the 1st day of March, and not filed until the first day of the ensuing term, it appearing that the appellee had incurred no inconvenience or injury from the delay, will not be dismissed on motion. *Smith* v. *Foster*, 551.

16. Where the record of appeal is not filed until after the return day, and no application for an extension of time has been made, the appeal will be dismissed upon motion. *Amis* v. *Purvis, Wood & Co.* 716.

17. Where an appeal was not filed when made returnable, and no application was seasonably made for further time, the appeal will be dismissed. *Bonnabel* v. *Walter*, 744.

IV. *Appeal Generally.*

18. A judgment of an inferior court upon a question of fact will not be reversed, unless clearly unsupported by the evidence. *Carlisle* v. *Steamer Eudora*, 15.

19. A bill of exceptions to the rejection of testimony, which does not set forth the grounds upon which the testimony was rejected, cannot be noticed by the court. *Bryan* v. *Dubois*, 17.

20. Judgments of inferior courts will not be reversed for slight errors, when there has been no attempt made to correct them by motion for new trial or otherwise in the court of the first instance. *Kohn* v. *Schooner Renaissance*, 25.

21. Where the sale of a slave seized on execution was enjoined by a third person who claimed the slave as his own, and the sum of one hundred and fifty dollars damages for the wrongful seizure, in determining whether the amount of the controversy is sufficient to give jurisdiction of the case, the value of the slave must be included, and the amount mentioned in the act of sale as the price is evidence of that value. *Bouligny* v. *White*, 31.

22. The rejection of testimony which does not appear to have been material or sufficient to have changed the result is not good ground for remanding a cause. *Rowland* v. *Jarvis*, 43.

23. Refusing an immaterial charge to the jury is no ground for reversal of the judgment. *Ib.*

24. In a contest between two officers, as to which of them is entitled to perform certain duties and to receive the fees and emoluments therefor, the plaintiff may lay his damages at a sum over three hundred dollars; and the Supreme Court will take jurisdiction of the appeal. *Prieur* and *Labatut* v. *Commercial Bank*, 7 L. R. 509, affirmed. *State* v. *Hackett*, 91.

25. The Supreme Court has not jurisdiction in an appeal from a judgment on a reconventional demand for twenty-five dollars, although the amount of the plaintiff's claim be over three hundred dollars. *Dean* v. *Clark*, 105.

26. A case will not be remanded because the court of the first instance did not pass upon a plea in reconvention, in support of which no evidence had been introduced, when the omission was not brought to the notice of the judge before the decree became final. *Bouchereau* v. *Casson*, 119.

27. A party cannot appeal from a decree in his own favor appointing him administrator when its effect could be avoided by a refusal to accept the appointment. *Succession of Decoux*, 140.

28. An appellee who seeks a change of the judgment in his favor, must file an answer to the appeal. The argument filed by counsel is not such an answer as is required. C. P. 888. *Succession of Hilligsberg*, 1st Ann. 340, affirmed, *Ib.*

29. The court cannot take notice of the rejection of testimony, unless bills of exception were taken to the rejection. *Succession of Rivet*, 141.

30. Where an appellant has acquiesced in a judgment and satisfied it, the appeal will be dismissed. *Lanoue* v. *Bessy*, 233.

31. The question of continuance cannot be considered by the Supreme Court where there has been no bill of exceptions taken

to the ruling of the court of the first instance. *Dwight* v. *Richard*, 365.

32. Where an appeal has been granted, in determining whether it be suspensive or not it is the duty of the court so to construe it (if susceptible of such a construction,) as not to involve an attempt by the judge in granting it to violate the law. *State* v. *Second District Court*, 518.

33. Where the record of appeal is complete, with the exception of the evidence which had been lost, so that the clerk could not send it up with the record, and the loss is in no manner attributable to the appellant, the cause will be remanded. *Lyons* v. *Andrews*, 602.

34. Where the evidence which has been improperly rejected by the lower court comes before the Supreme Court annexed to a bill of exceptions, it may be received and considered by the Supreme Court. *Copley* v. *Edwards et al.* 647.

35. Where no bill of exceptions is taken to the refusal of the court to grant a continuance, the question cannot be examined by the Supreme Court. *Crain & Jones* v. *Kane*, 659.

36. Where there was no order in the court of the first instance granting an appeal, the appeal will be dismissed. *Cane* v. *Pollock*, 666.

37. It is not necessary to make one who has not been cited, and who is a mere nominal party to the suit, a party to the appeal. *Francis* v. *Scott et al.* 668.

ARBITRATORS AND AMICABLE COMPOUNDERS.

A submission to arbitration and the award thereon must be proved by evidence in writing. C. C. 3067. *Raguet* v. *Carmouche*, 133.

ARREST.

1. The affidavit stands as *primâ facie* evidence to sustain an arrest, but this may be overthrown by proper evidence. *Gardner, Sager & Co.* v. *O'Connell & Gould*, 353.

2. A debtor under arrest has a right to have the propriety of the arrest speedily determined, and upon a rule. *Ib.*

ATTACHMENT.

1. Where an attachment was issued upon an affidavit, and the bond given was sufficient in amount for that sum, but was not sufficient to cover interest for several years, which was claimed in a supplemental petition, the attachment was good for the amount claimed in the affidavit, but not for a greater amount. *Fellowes, Johnson & Co.* v. *Dickens*, 131.

2. An attachment will not lie against the property of a partnership, where one of the partners resides in the State, and it is not shown that the partnership domicil is out of the State. *Sherley, Escott & Co.* v. *Owners of Steamer Bride*, 260.

3. The sheriff holds property seized under attachment for the benefit of whom it may concern. If the attaching creditor succeeds in his suit, the rents and profits during the attachment belong to him to the extent of his claim, and he may recover the same in a direct action against the tenant if he has not paid the rents to the sheriff. *Stockton* v. *Hyde*, 300.

4. Where no authority is shown by an agent for making the oath and signing the bond for the issuing of an attachment, than that he was employed as an attorney at law in another State to bring suit to collect the debt, the attachment will be dismissed. *Wetmore* v. *Daffin et al.* 496.

ATTORNEY AT LAW.

1. An attorney at law who retains a reasonable amount out of his collections for his fee, cannot be compelled to refund the amount retained. *Mongel, Tutor*, v. *Tessier*, 165.

2. Under ordinary circumstances, the appearance of a member of the bar as the attorney of record to a suit in the place where the party resides, would be evidence of his having been employed by the party in the cause; but this presumption may be repelled by evidence. *Roselius* v. *Delachaise*, 482.

3. However valuable the services of an attorney may have been to a party in a suit, in which he represented others having a similar interest, he cannot recover a fee from a party who has not employed him. *Ib.*

ATTORNEY IN FACT.

See MANDATE.

AUTHENTICATION.

See EVIDENCE.

BAIL.

See CRIMINAL LAW.

BANKS.

1. Under the acts of the 14th of March, and 5th of April, 1843, the banks of this State were obliged to receive their own notes in payment. *Walker* v. *Municipality Number One*, 10.

2. Where a bank transferred a promissory note subsequent to maturity, the holder acquired no greater rights than the bank itself had, and could be compelled to receive in payment the notes of the bank. *Ib.*

3. If a co-defendant paid the debt in specie, such co-defendant could not upon subrogation recover of the other specie, he having the right to pay the debt in depreciated bank bills. *Ib.*

4. The provision in the 7th section of the act amending the act for the incorporation of the Consolidated Association of the Planters of Louisiana, approved 19th of February, 1828, declaring "That the State shall be and is hereby acknowledged to be a stockholder to the amount of one million of dollars as a *bonus*," did not make the State liable for contributions and losses of the bank as ordinary stockholders were. *Consolidated Bank* v. *State of Louisiana*, 44.

5. A *bonus* is a premium or consideration given to a grantor for what is received. It implies an advantage, a benefit given in return for the benefit received, or an inducement to the grantor for conferring that benefit. If the State be made liable as other stockholders, no advantage was given to the State and consequently no *bonus*. But the act expressly gives a *bonus* to the State. *Ib.*

6. Under the charter of the Citizens' Bank, the court has no control over mortgages given to secure a loan, unless the debt has been paid. *Duhart* v. *Citizens' Bank*, 141.

7. One who is sole stockholder of a bank, and the recipient of its assets, is bound to pay a claim against the bank if the assets amount to the sum claimed. *Robertson et al.* v. *Conrey*, 297.

8. Where a note is given to a bank for a sum of money payable in the notes of the bank, it is an obligation to extinguish so much of the bank's liabilities on the maturity of the note; in default of which judgment will be given for the full sum in money. *Roberts* v. *Wilkinson et al.*, 349.

9. The Commercial Bank suspended specie payments in the year 1843, and resumed in 1844. A party who had caused notes of the bank to be protested on the suspension of the bank, can recover the interest imposed by the charter as a penalty for suspension only during the time of the suspension. *Commercial Bank* v. *Foster*, 516.

10. An election of directors of a bank will not be set aside because the commissioners received votes without proper evidence, when it is subsequently shown that the votes so received were legal votes. *Widow Conant* v. *Millaudon*, 542.

11. Persons who hold stock as trustees are legal voters in an election for directors. *Ib.*

12. The prohibition against aliens being directors of a bank, contained in the act of the 5th February, 1842, does not apply to the Carrollton Railroad Company, that corporation having surrendered its banking privileges. *Ib.*

13. The receiver of an insolvent bank may sue all the stockholders for contributions of stock before the tribunal in which the bank is in liquidation, although some of them may reside in different parishes. *Stark, Receiver*, v. *Burke, Watt & Co. et al.* 740.

BANKRUPT.

To render a bankrupt who has been discharged liable on a new promise to pay a debt, the obligation must clearly result from the words used in making the new promise; and the expressions "I expect to pay you as fast as I can in money, not in property," are not sufficient to create a new obligation. *Bartlett* v. *Peck et al.* 669.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

I. *Title to, and Transfer of.*

1. In a suit by the holder of a note against the maker, where the payee has transferred it, the plaintiff is bound to prove the endorsement of the payee before he can recover. *Beatty* v. *Tanner*, 147.

II. *Presentment, Protest, Notice and Waiver of Notice.*

2. Where a promissory note is made payable at a particular place, in an action against the maker it is not necessary to allege or prove that a demand of payment was made at the place designated in the note to enable the plaintiff to recover. The want of such demand if any injury to the defendant has resulted from it, is a matter of defence for the defendant. *Ripka* v. *Pope*, 61.

3. The statutes of February 14th, 1821, and March 13th, 1827, in relation to protests and notices of protest of bills of exchange, &c., were not intended to change

the commercial law as it stood before, but to afford, in aid of commerce, a new, convenient and permanent means of proof. No one is bound to employ a notary to make demand of a note or to give notice to an endorser. *Lathrop, Administrator*, v. *Lawson et al.* 238.

4. Where the certificate of a notice is informal, not having been attested by two witnesses, the notice may be proved by other evidence, and the certificate made by the parish judge who made the protest and gave the notice, but who subsequently died, is competent evidence of the protest and notice. *Ib.*

III. *Consideration of.*

5 A note bearing the same date, and for the same amount as one mentioned in the act of sale, is sufficient evidence to identify it with the act of sale as the consideration, unless it is shown that another note was given. *Bryan* v. *Dubois*, 17.

6. Where the holder of a note receives it from the payee after its maturity, he is considered as standing in the place of the payee, and it is subject to any defence which might have been urged against the payee; and if there was a failure of consideration, he cannot recover on it. *Sawyer* v. *Hovey et al.* 153.

7. Conceding that the consideration of a negotiable note cannot be inquired into when it is in the hands of an innocent endorsee, yet when the objection arises from the incapacity of the party to enter into the obligation, as that she was a married woman, the endorsement does not give any additional effect to the obligation. *De Gaalon* v. *Matherne*, 495.

8. The fact that a note shows on its face that it was given by a married woman, is sufficient notice to any one to put him on inquiry as to whether it inured to her separate use, before he discounted it. *Ib.*

9. Where the consideration of a promissory note was the sale of improvements upon the public lands, it will be presumed, unless the contrary be shown, that the vendor was a settler to acquire a preëmption, and not a trespasser upon the public lands, and the consideration is good. *Price* v. *Curran*, 686.

IV. *Bills of Exchange and Promissory Notes generally.*

10. A release of the drawer of a note by the holder, without the consent of the endorser, destroys all recourse against the endorser. *Citizens' Bank* v. *Dugué et al.* 12.

11. The endorser who pays a note in ignorance of the fact that the drawer had been released by the holder, and that he was consequently discharged from all liability, can recover back the money so paid. *Ib.*

12. The holder of a promissory note received for value in good faith before maturity cannot be affected by any pretended equities between the drawer and endorser. *Kohlman* v. *Ludwig*, 33.

13. Where a note was given, secured by mortgage, which recited that the note was to be signed by A. B. and C., but which was never signed by C., and the transaction appearing to be still incomplete and still pending before the notary, there being no evidence as to the manner in which the plaintiff came into possession of the note, an action on the note against B. cannot be maintained. *Syndics of Dunbar* v. *Woods et al.* 135.

14. A mere understanding without any substantive agreement between one of two syndics, with a surety of a purchaser at the sale, that the notes to be taken by the syndics in payment were to be signed by a third person also as surety, does not sustain the defence that the surety is discharged because the third person did not sign. The delivery of the notes to the payees, payable to order and in complete form, without any reservation, is conclusive against the defence. *Ib.*

15. Where a note is given for future services to be rendered, the non-payment of the note justifies the withholding of those services: and where the services rendered before the maturity of the note were worth the amount of the note, the party rendering them is entitled to recover that sum in an action on the note. *Cooley* v. *Doherty et al.* 163.

16. Where there are mutual accounts, a party who has accepted drafts drawn upon him by the other party, has a right to be credited with the amount for which he has accepted, the drafts being at the time still outstanding. *Ames* v. *People's Telegraph*, 183.

17. Where an endorser pays a note upon which judgment had been obtained against him, he acquires no greater right against prior parties to the note than the judgment creditor had; and if they be discharged by prescription, he cannot recover of them. *Christine* v. *Chaney*, 219.

18. Where the vendor draws a bill upon the vendee's factor, which is accepted, he does not thereby lose recourse upon the vendee for the amount of the purchase upon the dishonor of the bill; but in so doing he should not include in the bill amounts due by other vendees; for the vendee, upon payment, is entitled to the possession of the bill, which could not be

given if other vendees were also entitled to it. *Van Wart, Son & Co.* v. *Hopkins*, 266.

19. If the vendor who has drawn a bill upon vendee's factor, after acceptance releases the acceptor, he thereby loses all recourse upon the vendee for the amount of the purchase. *Ib.*

20. A bank check when payable to order is negotiable, and the endorser is liable, not as a mere transferee, but as the endorser of a bill of exchange. *Barbour* v. *Bayon*, 304.

21. Bank checks are not entitled to days of grace, being payable immediately on presentment. *Ib.*

22. The fact that a bill is dated at New Orleans, in the absence of any proof as to the place of acceptance, raises the presumption that it was accepted in New Orleans. *Blossman* v. *Mather*, 335.

23. Where a note is made payable in current funds, by the laws of Mississippi judgment can only be rendered for the value of such funds on the maturity of the note, and a case will be remanded to ascertain that value. But under the decisions in Louisiana, judgment will be rendered in contracts governed by our laws for the amount of the note. *Roberts* v. *Wilkinson et al.* 379.

24. A party receiving a bill of exchange after maturity is subject to any equities existing, between the original parties. *Connery* v. *Kendall*, 515.

25. A bill of exchange when once paid by the acceptors cannot be again reissued after maturity so as to bind the drawer. *Ib.*

26. Where a credit has been placed on a note in the handwriting of the drawer, it will be presumed to have been placed there with the holder's assent, unless the contrary be shown. *Mims* v. *Morrison*, 650.

27. Where an obligation is made payable at a particular place, and the obligor is proved not to have provided the funds at the place to pay it, the holder is dispensed from presenting it at that place. *Albert & Quertier* v. *Citizens' Bank of La.*, 720.

BOUNDARY.

See LANDS.

BUILDER.

See LETTING AND HIRING OF LABOR.

CESSIO BONORUM.

See INSOLVENCY.

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CLERKS OF COURTS.

Deputy clerks of the district courts are not authorized to grant orders of arrest for debt. *Weingerter* v. *White*, 487.

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COMMON CARRIER.

1. Where one of the part owners of a steamer contracted in his own name with a pilot, the other part owners will be liable to the pilot. *Carlisle* v. *Steamer Eudora*, 15.

2. Where sheet iron is stowed in such proximity to salt as to be rusted and injured thereby, the vessel is responsible for the damage. *Marsh & Ranlett* v. *Ship Switzerland*, 111.

3. Owners of steamboats are commercial partners. C. C. 2796. *Escott & Co. v. Owners of Steamer Bride*, 260.

4. Ships and owners are liable for loss and injury to goods shipped, caused by bad stowage and want of care. *Hart & Co. v. Ship Jane Ross*, 264.

5. Vessels are liable for loss and injury to goods shipped occurring from improper delay in not sailing at the appointed time; but the amount of damage must be shown by evidence. *Ib.*

6. A privilege follows the object to which it is attached, and the creditor may lay hold of that object by the proper writ of seizure, in whatever part of the State it may be found, whether at the owner's domicil or not. *Henning v. Steamer St. Helena and Owners*, 349.

7. In proceedings *in rem* personal service upon the owner of the thing seized dispenses with the usual publications. *Ib.*

8. The owners and masters of steamboats when sued in this State may plead their domicil in another parish than the one in which the suit is instituted. *Ib.*

9. In an action against a vessel and owners for the non-delivery of freight, the defendants may, under the general issue, introduce testimony to show that the identical goods delivered by the plaintiff were shipped by another person, who took a bill of lading for them. *Erart v. Brig Lowndes*, 426.

10. In a collision between a steamboat and a flatboat, the presumptions are against the steamer. *Ruffner v. Belsnyder et al.* 536.

11. Where a steamboat is in the habit of charging freight for carrying remittances of money, if a package containing money be handed to the captain without informing him of its contents, there being no charge for freight, the owners of the vessel are not liable for the money in case of its loss. The captain is responsible as depositary merely. C. C. 2508. *Mechanics & Traders' Bank v. Gordon*, 604.

12. Where a steamboat loses a portion of her cargo in consequence of being snagged, the loss is considered as one falling within the perils of the river, and the vessel is not liable. *Boyce v. Welch*, 623.

13. Where a vessel is sued for damage done to goods in transportation, the burthen of proof is on the defendant, (after the damage is proved,) to show it did not happen on board the vessel. *Holland v. Cammett et al.* 705.

COMMUNITY.

See Husband and Wife.

COMPENSATION.

A claim is to be considered as liquidated by an acknowledgment on the part of the debtor of its correctness and a promise to pay it. When a claim thus liquidated is offered in compensation of a promissory note, it is not required that the liquidation should be proved by evidence in writing. C. C. 2205. *Ogden and husband v. Cain*, 160.

COMPROMISE.

A compromise cannot be annulled on account of lesion. C. C. 3045. *Long v. Robinson et al.* 627.

CONFLICT OF LAWS.

1. Real estate, upon the death of the owner, must be distributed according to the laws of the country where it is situated. *Dunbar, Widow, v. Heirs of Dunbar*, 158.

2. The capacity of a married woman, in ordinary cases, domiciliated in this State, to make contracts to be executed in another State, must be determined by the laws of this State; the rules governing the capacity being *personal statutes*, especially where the married woman is separated in property from her husband. *Roberts v. Wilkinson et al.* 369.

3. The court will discountenance the practice of bringing slaves to this State for the purpose of defeating the rights of property existing in them under the laws of the State from which they are removed. *Frierson v. Irwin*, 525.

4. Where a title to slaves has been acquired by prescription in another State, that title will not be disturbed by the subsequent removal of the slaves to this State, and the prescription will be determined by the laws of the State from whence they were removed. *Ib.*

5. An assignment made in good faith according to the laws of another State, in favor of creditors domiciliated in that State, by a party also domiciliated there, will be enforced on the property of the debtor in Louisiana which has been actually transferred to the assignee; provided no injury arises therefrom to our own citizens, and not otherwise. *Chewning v. Johnson*, 678.

6. Property, in relation to which an order of court of a sister State of competent jurisdiction has been issued, and which has been fraudulently or forcibly withdrawn and brought to Louisiana, is not liable here to attachment by third persons, so as to defeat the rights acquired by virtue of the previous order. In such a case, a decree will

be entered ordering a prompt restitution of the property, or such decree as will prevent any right being acquired by those fraudulent attempts. *Paradise* v. *Farmers and Merchants' Bank of Memphis*, 710.

CONSIGNEE.

See MANDATE.

CONSTITUTION.

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II. *Of State*, 1845.

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III. *Interpretation of.*

1. An ordinance of the municipality, prescribing the place for landing masts, spars, &c., on the Canal Carondelet, is not upon its face in conflict with the Constitution, nor illegal; the power of regulating the public ways, and maintaining order and safety thereon, being in the municipality. *Municipality No. One* v. *Kirk*, 34.

2. On the 16th of March, 1848, an act was approved entitled an act "to regulate and define the fees to be paid by owners of runaway slaves for the taking up and confinement of the same," &c. Under this act the custody and management of runaway slaves were changed from the previously existing laws: *Held* by the court, that all that part of the act making a change in these respects was in violation of art. 118 of the State Constitution, and consequently null. *State* v. *Hackett*, 91.

3. The intention of art. 118 of the Constitution was to make it obligatory on the Legislature to state the object of every law in its title according to the understanding of reasonable men. An act to regulate and define fees appears to exclude the general and sweeping object of the statute of 16th March, 1848. *Ib.*

4. The act approved the 16th of March, 1848, entitled "An act to give jurisdiction to the District Courts of New Orleans over causes arising under the act of 3d of March, 1819 respecting landlords and tenants," is unconstitutional; the title not being in conformity with the articles 118, 119, of the State Constitution. *Heirs of Ducerge* v. *Salter et al.* 94.

5. The article 126 of the State Constitution applies to the holding of two offices under the State, and not where one of the offices is held under municipal authority. *Dorsey* v. *Vaughan et al.* 155.

6. Article 62 of the Constitution, which invests the courts with the judicial powers, cannot be extended by implication. *Gerald* v. *Gerald*, 242.

7. The grant of judicial power, in article 79 of the Constitution, is an exception to article 62. *Ib.*

8. The grant of judicial power therein conferred upon clerks of court does not extend to their deputies. *Ib.*

9. The laws of 29th of May, 1846, and 16th of March, 1848, do not confer on deputies the judicial powers vested in clerks by the Constitution. Those acts give no other powers to deputy clerks than those previously vested in them by law. *Ib.*

10. The limitation imposed by art. 96 of the New Constitution upon the duration of offices, applies to offices held under the former Constitution and laws. *State* v. *Percy*, 282.

11. Where the charter of a bank exempts the stock and real estate of the bank from any tax laid by the State, parish, or any body politic or corporate, a tax imposed by the Municipality Number One on the real estate of the bank is in direct conflict with the charter, and illegal. Such an exemption is not repealed by the art. 127 of the Constitution. *Municipality No. One* v. *Louisiana State Bank*, 394.

12. The act of 25th of March, 1813, against carrying concealed weapons is not unconstitutional. *State* v. *Chandler*, 489.

13. The act of 20th of March, 1839, incorporating the town of Shreveport and giving the municipal authorities exclusive right to establish ferries across Red River, did not create a contract or vested rights in that corporation which the Legislature could not constitutionally change or annul. *Police Jury of Bossier* v. *Corporation of Shreveport*, 661.

14. The act of 16th of March, 1848, entitling the Police Jury of the parish of Bossier to a participation in the management of the ferry established by the town of Shreveport across Red River, and to share in the revenues thereof, is not unconstitutional. *Ib.*

15. The prohibitions contained in art. 109 of the Constitution of Louisiana, and in art. 1, sec. 10 of the Constitution of the United States, apply only to contracts or vested rights of individuals or private corporations, and not to municipal corporations established for public purposes, which are entirely sub-

ject to the legislative will, except so far as the rights of third persons may be affected thereby. *Ib.*

16. Prisoners arrested for larceny are bailable under the Constitution during the pendency of the examination for commitment by the magistrate. *State* v. *Ozer*, 744.

17. The act of the 1st of June, 1846, providing for the trial of causes in which a district judge shall be recused by the district judge of an adjoining district, is not unconstitutional. *State* v. *Judge of Fifth Judicial District*, 756.

18. The question whether the legislative branch of the Government has or has not transcended its powers, is the highest and most important act which the judiciary can be called upon to perform; and no law ought to be held unconstitutional, and consequently void, unless its opposition to the Constitution be clear and free from doubt. *Ib.*

CONTRACTS.

See OBLIGATIONS.

CORPORATIONS.

1. The act of April 1st, 1835, extending the powers of the Carrollton Railroad Company and providing a new mode of electing directors, repealed the provisions of the act of 9th of February, 1833, upon the same subject; and the stockholders having voted to reduce the number of directors to eight, under the act of the 22d of August, 1842, that was the number to be elected. *Conant* v. *Millaudon*, 26.

2. Our laws secure to the public the use of the banks of navigable rivers; and within the limits of incorporated towns, the municipal governments are authorized to regulate that use, and to cause obstructions to be removed; but they have no right to convert the batture formed in front of the property of individuals to private purposes, such as wood yards, saw mill, and the like. *Carrollton Railroad Company* v. *Winthrop et al.* 36.

3. The liability of municipal corporations for the acts of their agents is a general rule of law too well settled to be seriously questioned. *Johnson* v. *Municipality No. One*, 100.

4. Proceedings by the city of Lafayette to expropriate property for public use, under the act of 1st of June, 1846, may be discontinued at any time before they are finally acted upon by the court; and the discontinuance of such proceedings, gives no cause of action to the owners of property, the expropriation of which was contemplated. *Malard & Armistead* v. *City of Lafayette*, 112.

5. Until the forfeiture of a charter is judicially determined in a suit brought for that purpose by the state, no advantage can be taken of any cause of forfeiture in any collateral action. *Wright* v. *Benjamin, et al.* 179.

6. A defendant sued on a note given for the purchase of certain chartered rights, cannot set up as a failure of consideration causes of forfeiture which existed at the date of his purchase. *Ib.*

7. Stock mortgage in the Clinton and Port Hudson Railroad Company takes precedence of a mortgage stock loan made under the provisions of the charter of said company. *Langfitt and Perry* v. *Brown, Administrator*, 231.

8. The act of 16th of March, 1848, for the purpose of distributing the assets of the Mexican Gulf Railroad Company, authorized an equitable compromise between the State and other claimants to the funds, but a compromise by which about half the funds were relinquished to one of them, who claimed only about $16,000, while the claim of the State was for $100,000, was inequitable. The funds should have been divided *pro rata*. *State* v. *Mexican Gulf Railroad Company*, 333.

9. Where the debtor of a corporation is garnisheed upon a debt which was payable in the notes or obligations of the corporation, he cannot be condemned to pay the amount of the debt in current funds. The judgment should be that he pay in the notes or obligations of the corporation, within a certain specified time, or that he shall, in default, pay a certain sum of money. *Marshall* v. *Grand Gulf Railroad Company*, 360.

10. Where the charter of a company directs the mode in which stock in it shall be taken, and stock is issued by the company in contravention of the regulations imposed by the charter to a purchaser who executed his note therefor, when sued on the note he cannot set up as a defence the violation of the charter in the sale to him. If other stockholders do not complain of the sale to him he cannot set up his own wrong in his defence. *Canal Bank* v. *Holland*, 363.

11. The abandonment contemplated by the act of 1st of June, 1846, for the opening of streets in the city of Lafayette, is one to be made by the owner; and where the property belonged to the community, the surviving husband can only abandon his interest in it. *Heirs of Guillotte* v. *City of Lafayette*, 382.

12. Where a testator wills that a certain plantation shall forever belong to his succession, and directs that an act of incorporation shall be obtained for the town which he expects to be erected thereon, it will be

considered that the act of incorporation relates merely to the municipal government of the town, and that it does not effect any change in the title to the property on which the town is to be situated. *Heirs of Henderson* v. *Rost et al.* 441.

13. A corporation is responsible for exercising, through its officers, in an unskillful and improper manner, powers vested in it by its charter. *Walling* v. *Mayor, &c. of Shreveport*, 660.

14. The act of 20th of March, 1839, incorporating the town of Shreveport and giving the municipal authorities exclusive right to establish ferries across Red River, did not create a contract or vested rights in that corporation which the Legislature could not constitutionally change or annul. *Police Jury of Bossier* v. *Corporation of Shreveport*, 661.

15. The act of 16th of March, 1848, entitling the Police Jury of the parish of Bossier, to a participation in the management of the ferry established by the town of Shreveport across Red River, and to share in the revenues thereof, is not unconstitutional. *Ib.*

16. The prohibitions contained in art. 109 of the Constitution of Louisiana, and in art. 1, sec. 10 of the Constitution of the United States, apply only to contracts or vested rights of individuals or private corporations, and not to municipal corporations established for public purposes, which are entirely subject to the Legislative will, except so far as the rights of third persons may be affected thereby. *Ib.*

17. The courts have the power of appointing receivers to liquidate the affairs of insolvent corporations, if there be no other person provided by law to effect such liquidation, whenever it is necessary, in order to preserve the interests of all parties concerned. *Stark, Receiver* v. *Burke, Watt & Co. et al.* 740.

18. Where an insolvent bank was in course of liquidation under the laws of the State, and the term of the office of liquidator expired without there being any legal provision for the appointment of another, the court properly appointed a receiver. *Ib.*

COSTS.

1. The prescription applicable to costs of court is suspended by an appeal. *Copley* v. *Edwards et al.* 647.

2. The 12th section of the act of 26th of March, 1842, requiring the oath of the clerk, and the approval of the judge, before execution can issue against the plaintiff for costs, applies only to their collection every six months before the termination of the suit. *Ib.*

3. Where there are various parties to a suit claiming costs for a sum less than three hundred dollars, the appellant cannot give the Supreme Court jurisdiction by urging an unfounded claim for damages for five thousand dollars. *Ib.*

COURTS.

I. *Supreme Court.*

1. Where the unconstitutionality or illegality of a tax is not expressly alleged, the Supreme Court has no jurisdiction unless the amount in dispute is over three hundred dollars. *Charity Hospital* v. *Lammerman*, 380.

2. The Supreme Court is bound to exercise every power incident to its appellate jurisdiction, or which may be necessary to enable it to exercise that jurisdiction; and for this purpose may award writs of *mandamus* to judges of the district courts to prevent the right of appeal being defeated. *State* v. *Judge of Fifth Judicial District*, 756.

II. *District Courts.*

3. The act of 1st June, 1846, providing for the trial of causes in which a district judge shall be recused by the district judge of an adjoining district, is not unconstitutional. *State* v. *Judge of Fifth Judicial District*, 756.

III. *Courts generally.*

4. Courts of justice are bound to vindicate and maintain the sanctity of their judicial proceedings before they consider the merits of cases. *Denton* v. *Erwin*, 18.

5. Appointments made by decrees of courts of competent jurisdiction cannot be regarded as absolutely void, and attacked collaterally to the detriment of third persons. *Hoover et al.* v. *Sellers*, 180.

CRIMINAL LAW.

I. *Prosecution and Defence.*

1. In a prosecution for a violation of the Act to Prevent Gambling, evidence may be introduced showing that the defendants had been engaged in gaming, and playing at other times previous to the day charged in the information. *State* v. *Agudo et al.* 185.

2. The time of the commission of an offence laid in the indictment is not material, and does not confine the proofs within the limits of that period. The indictment will

be satisfied by proof of the offence on any day anterior to the finding. *Ib.*

3. The first section of the act of March 14th, 1836, amending the act of 19th of March, 1835, to prevent gambling, merely changes the destination of the fines when collected; and in no manner changes or affects the offence, as declared in the act of 1835. An information for that offence rightly concluded against the form of the statute. *Ib.*

4. An indictment under a statute ought with certainty and precision to charge the defendant with having committed or omitted the acts under the circumstances, and with the intent mentioned in the statute; and if any one of these ingredients be omitted the indictment is not good. *State* v. *Stiles*, 324.

5. The use of general terms in an indictment under a statute for a specific offence, do not cure a defective description in which the facts constituting the offence are not set forth. If the facts alleged do not make out the case, the indictment is defective. *Ib.*

6. The prisoner is entitled to the assistance and benefit of the advice of his counsel in exercising his right of challenge of jurors. *State* v. *Cummings*, 330.

7. In prosecutions for homicide, the place of the death must be stated in the indictment; and so even where the mortal blow was given in one parish and the deceased died in another parish. *Ib.*

8. An indictment for "breaking and entering a store," will justify a conviction under a statute against "breaking and entering a shop." *State* v. *Smith*, 340.

9. If the statement of the real facts in an indictment or information constitutes a substantial violation of the statute, it is the duty of the court to sustain the indictment or information. *Ib.*

10. Where the plea of *autre fois acquit* is set up, and the record shows on its face that the offence plead to was not the same of which the prisoner was before acquitted, the plea may be demurred to, and it is not necessary to submit it to a jury. *State* v. *Shaw*, 342.

11. Such allegations as that the whole proceedings are "informal, illegal and insufficient," are too general to be noticed by the court. *Ib.*

II. *Jury and Verdict.*

12. Where the foreman of the jury changed the finding of the jury, from guilty as an accessory after the fact, to guilty, without consulting with the other jurors, it is such an irregularity as vitiates the verdict, and a new trial will be granted. *State* v. *Levy* and *Dreyfous*, 64.

13. In the trial of criminal cases, the State should first exercise the right of challenge, whether for cause or peremptorily, and cannot do so after the prisoner has accepted the juror. *State* v. *Cummings*, 330.

14. The objection to any informality in drawing the jury should be made on the first day of the term. *State* v. *Shaw*, 342.

15. In capital cases, the jury should not be permitted to separate after they have been sworn, either with or without the consent of the prisoner. The practice is to keep the jury in charge of the sheriff, however long the trial may last. *State* v. *Desmond & O'Connor*, 398.

16. The right of trial by a jury "*de mediatate linguæ*." if it ever existed in Louisiana, was abolished by the statutes prescribing the qualifications of jurors, and the manner in which juries should be composed. *State* v. *Fuentes*, 427.

17. In exercising the right of a peremptory challenge to a juror, the better practice is, for the State first to decide and to present the juror to the prisoner as a good and lawful juryman. *State* v. *Florez*, 429.

III. *Criminal Law generally.*

18. To support an assignment of errors, the errors assigned must appear of record. *State* v. *Fretwell*, 24.

19. A bill of exceptions should be presented at the trial, or the point should be then expressly reserved and noted, and after the trial embodied in a bill of exceptions, without unnecessary delay, while the facts are fresh in the memory of both the judge and counsel. A bill of exceptions to a proceeding during a trial which took place the 27th June, but which was not presented until the 28th of July following, cannot be considered. *State* v. *Romero*, 24.

20. The assignment of a counsel for the prisoner as soon as the court is informed that he is without counsel, is all that the law requires. *Ib.*

21. The objection that the judge erred in refusing to postpone the trial, to enable the accused to confer with his counsel to prepare for his defence, will not be sustained when there was no motion or affidavit for continuance upon that ground. Nor will the absence of these be cured by the circumstance that the facts appear as one of the grounds in a motion for a new trial. *Ib.*

22. There may be an accessory after the fact to the crime of larceny, under the laws of Louisiana. *State* v. *Levy & Dreyfous*, 64.

23. Where a prisoner was indicted for murder, and the jury found him guilty of

manslaughter, upon a new trial he cannot be again tried for the crime of murder. *State* v. *Desmond* and *O'Connor*, 398.

24. There can be no accessories to manslaughter before the fact. Aiders and abettors are principals, and should be tried as such. *Ib.*

25. No affront by words and gestures only is a sufficient provocation to excuse or estimate such acts of violence as manifestly endanger the life of another. In this respect the law makes no distinction between free white persons and free persons of color. *State* v. *Fuentes*, 427.

26. A party who has been tried and acquitted cannot be again tried for the same offence. *State* v. *Upton, Carter, et al.* 438.

27. The only remedy contemplated in taking a bill of exceptions to the charge of the judge to the jury in criminal cases, is to obtain a new trial, which cannot be granted where the accused has been acquitted, unless the verdict of acquittal was obtained by fraud. *Ib.*

28. A name so badly spelled as to change the sound, may affect an indictment; but, where the foreman of the jury mis-spells the name of the prisoner in rendering the verdict, the name may be regarded as surplusage, and the verdict is not thereby vitiated. *State* v. *Florez*, 429.

29. In a trial for murder, evidence that the deceased was a quarrelsome man, of violent temper and dangerous when excited, is inadmissible. *State* v. *Chandler*, 489.

30. The act of 25th of March, 1813, against carrying concealed weapons is not unconstitutional. *Ib.*

31. In criminal cases, the judge, in his charge to the jury, should omit any strong expression of his opinions as to the guilt or innocence of the accused. He may, however, divest the case of all irrelevant matter found in the pleadings or arguments, and sum up the evidence for the prosecution and defence. *Ib.*

32. If there be an actual physical attack of such a nature as to afford reasonable ground to believe that the design is to destroy life or to commit a felony upon the person assailed, the killing of the assailant in such case will be justifiable homicide. *Ib.*

33. Where a prisoner tried for murder has been convicted of manslaughter only, and upon appeal to the Supreme Court, the judgment was reversed and the case remanded, he can only be tried for manslaughter on the second trial. *Ib.*

34. Prisoners arrested for larceny are bailable under the Constitution during the pendency of their examination for commitment by the magistrate. *State* v. *Ozer*, 744.

35. Bail bonds taken by the committing magistrate for the appearance of a prisoner during the examination for commitment, if forfeited, may be collected by an ordinary suit in the district court. The summary process provided by law on forfeited bail bonds is not applicable to such a case. *Ib.*

CURATOR.

See SUCCESSION.

CURATOR AD HOC.

See ABSENTEE.

DAMAGES.

I. *Ex Contractu.*

1. A demand for the performance of a contract, by a clerk who is a competent witness for the plaintiff, in the presence of another competent witness, is a sufficient putting in default to entitle the party making the demand to the recovery of damages. *Price & Frost* v. *Tucker*, 514.

2. Where the parties have stipulated a fixed penalty for the non-performance of a contract, the penalty may be recovered. *Ib.*

II. *Ex Delicto.*

3. Where the damages allowed by the jury for the unjustifiable killing of a slave, are less than the sum which should have been allowed, the court will increase the amount. *Arnandez* v. *Lawes*, 127.

4. Where a jury has not awarded such damages as the evidence establishes, the Supreme Court will increase the amount. *Dudley* v. *Canal Bank*, 295.

5. Where a party has made a seizure of the property of another, who was protested in consequence of his property being thus tied up, the party making the seizure is responsible for damages, and in assessing the damages, the injury arising from the loss of credit, &c., in consequence of the protest, are not "*too remote*" to be considered. *Dyke & Hurlbutt* v. *Walker*, 519.

6. Lawyers' fees incurred in recovering property which had been improperly seized in a suit against another person, may be recovered back in a suit for damages for the illegal seizure. *Ib.*

7. In an action by the vendee against the vendor of a steamboat for damages occasioned by the bursting of a boiler, the plain-

tiff must prove that the boiler was defective at the time of the sale, to be entitled to recover. *Baker* v. *Irwin et al.* 588.

8. Railroad companies are responsible for injuries inflicted upon passengers in consequence of the negligence, imprudence and want of skill of persons in the service of those companies; and the injury having occurred, it is not necessary that the party who sues for damages should allege the particular cause of the accident. *Carmanty and Wife* v. *Mexican Gulf Railroad Company*, 702.

9. To maintain an action for a malicious prosecution, want of probable cause as well as malice must have existed in undertaking the prosecution. *Penny* v. *Taylor*, 713.

DEPOSIT.

1. The holder of a tobacco warehouse certificate, who has made advances upon it, is entitled to retain the tobacco even without a formal act of pledge as against the original vendor who delivered the tobacco without being paid for it. *Lee & Ritchie* v. *Galbraith, et al.* 343.

2. It is more equitable that the vendor who delivers possession of his property to the vendee without being paid for it, should suffer by the acts of the vendee, than that third persons who made advances upon the faith of the vendee's possession should lose by it. *Ib.*

DEFAULT.

See DAMAGES.

DOMICIL.

1. Upon a question of domicil, the declarations of a party made in authentic acts are admissible in evidence against him, but he is not concluded by such declarations, and may disprove them in all cases where the domicil is not one of the causes of the contract. *Davis* v. *Benion*, 248.

2. One who is a party to a joint and several note cannot be compelled to answer to a suit brought against his co-obligor and himself from another parish than the one in which he is domiciled. *Seawell* v. *Key & Johnson*, 271.

3. The owners and masters of steamboats when sued in this State may plead their domicil in another parish than the one in which the suit is instituted. *Henning* v. *Steamer St. Helena and Owners*, 349.

4. Where the intentions of a party are sought to be established, as upon a question of residence, he may show what were his intentions by introducing in evidence his own acts and declarations made at a time not suspicious. *Gardner Sager & Co.* v. *O'Connell & Gould*, 353.

DONATIONS.

I. *Donations, Inter Vivos.*

1. A recommendation by a testator in his will "to give from time to time some little assistance" to a certain person, does not amount to a legacy, for the want of certainty; nor does it entitle the person to alimony from the estate of the testator *Succession of Trouard*, 390.

2. A donation, in which the donor reserves the usufruct for life is invalid. C. C 1520. *Hagerty* v. *Corri*, 433.

3. The purchase of property by the father in the name of his children, is valid as to all who were not creditors at the time of the purchase. *Hopkins* v. *Buck et al.* 487.

4. The French text of the C. C. 1507, evidently expresses the intention of the Legislature. The English text, taken literally, is without meaning. *Beaulieu, f. m. c.*, v. *Ternoir, f. m. c., et al.* 476.

II. *Donations, Mortis Causa.*

5. Where a testator institutes certain persons as heirs, in general terms, and directs that they should receive ten per cent interest on a certain debt due him, which comprised all the property belonging to him at the date of the will, and he afterwards acquires other property, the heirs thus instituted are entitled to the property subsequently acquired, and the directions given in the will do not restrain the effect of the institution in general terms. *Shaw, Tutor*, v. *York et al.* 146.

6. Until a will has been probated it can produce no legal effect, and is not admissible in evidence. *Marcus, f. w. c.*, v. *Barcas, f. m. c.*, 265.

7. Where an olographic will was dated at the commencement, and after making various dispositions was signed by the testator, and he subsequently added another clause and again signed it, the instrument appearing to be congruous and continuous, it will be presumed, in the absence of proof to the contrary, that it was finished at one time, and is clothed with the forms required for its validity. *Lagrave* v. *Merle, Executor*, 278.

8. A recommendation by a testator in his will "to give from time to time some little assistance" to a certain person, does not amount to a legacy, for the want of cer-

tainty; nor does it entitle the person to alimony from the estate of the testator. *Succession of Trouard*, 390.

9. Where the testator has made a legacy to his natural children, the mother will not be regarded as a person interposed between the donor and the children; nor will the children be regarded as interposed in reference to the mother, where the testator has left her a legacy. *Succession of Macarthy*, 434.

10. An attempt by a testator to perpetuate his succession is in violation of the policy of the law. *Heirs of Henderson* v. *Rost et al.* 441.

11. The spirit of the laws abolishing substitutions and *fidei commissa* is to prevent property from being tied up and out of the reach of commerce. *Ib.*

12. Where a legacy is so intimately connected and interwoven with another legacy which is the principal one, as to be dependant upon it and legally indivisible, the nullity of the principal legacy necessarily carries with it the other. *Ib.*

13. Where a testator wills that a certain plantation shall forever belong to his succession, and directs that an act of incorporation shall be obtained for the town which he expects to be erected thereon, it will be considered that the act of incorporation relates merely to the municipal government of the town, and that it does not effect any change in the title to the property on which the town is to be situated. *Ib.*

14. A residuary donation *inter vivos*, made to certain persons therein named, is null, because it contains a "*fidei commissum*;" but this nullity does not affect the title of the original donee, which remains good to the property donated. The entire donation is null only in cases of substitution. *Beaulieu* v. *Ternoir et al.* 476.

15. Where the testator wills property to one for his life, directing that in case the legatee should die without heirs, the property should return to a third person designated, the legacy is a prohibited substitution and void. *Roy et al.* v. *Latiolas et al.* 552.

16. Property willed to A. for life, and after her death to go to her children, living at the opening of the will, it will be considered that A. has an usufruct for life, and that the naked title to the property vested in the children. *Ib.*

17. The formalities prescribed by art. 1571 C. C. for nuncupative testaments must be strictly complied with, and although the notary's certificate states that the legal formalities were observed, this may be contradicted by parol proof. *Mouton* v. *Cameau's heirs*, 565.

DOTAL PROPERTY.

See Husband and Wife.

ELECTIONS.

1. In the clause in the sixth section of the act of June 1st, 1846, prescribing the time when a new election shall be held, the phrase *term of the court* in the parish of Jefferson, means the monthly terms of the court. *Borgstede* v. *Clarke*, 291.

2. After the governor has issued a commission to an officer whose election was contested, upon the party contesting having discontinued his suit, it is too late for him to renew the contest or dispute the right of the officer holding the commission. *Ib.*

3. In proceedings under the act of 1st of June, 1846, for contesting certain elections, there is no appeal. Parties are left to their ordinary remedies of *quo warranto*, or action at law. *Rice* v. *De Buys* 398.

4. The commissioners of an election who act in good faith under an act of the Legislature prescribing the mode of conducting elections, are not responsible in damages for rejecting a vote under that act, although the law upon subsequent investigation before the courts should be pronounced unconstitutional. *Dwight* v. *Rice et al.* 580.

5. The general rule prescribed by the Code of Practice that the party cast shall be condemned to pay the costs, applies to civil suits and not to proceedings under the act of June 1st, 1846, in reference to contested elections. *Borgstede* v. *Clarke*, 733.

ERROR.

See Obligations.

EVICTION.

See Sale, Warranty.

EVIDENCE.

I. *Competency of Witness.*

1. All persons are competent to testify as witnesses in court, both in civil and criminal matters, except those who are expressly excluded. No incompetency has been declared by our laws with reference to free persons of color. They are competent witnesses in civil and criminal matters. C. C. 2260. *State* v. *Levy & Dreyfous*, 64.

2. As a general rule the vendor is incompetent on the ground of interest in a suit concerning the vendee's title; but that

incompetency may be removed by a proper release. Wherever the release can cover the interest it is sufficient to remove the incompetency of the witness. *O' Blennis* v. *Corri*, 101.

3. The testimony of one witness is sufficient to prove that a note which was secured by a mortgage upon the property of a married woman, which was given by A., was in fact given for the benefit of a firm composed of A. and her husband, and that by the mortgage she was security for her husband, and consequently not legally bound. *Bach* v. *Cornen et al.* 109.

4. The surety on a bond for the release of property provisionally seized, is a good witness for the defendant after the substitution of another surety who had been accepted. *Courtney* v. *Hunt*, 174.

5. The payee of a note is a good witness for the holder against the drawers, where the defence is payment. *McCraw, Curator* v. *Tompkins & Larche*, 183.

II. *Judicial Records and other Official Instruments.*

6. The records of various suits between C. and other persons to which A. was not a party, are admissible in evidence to prove *rem ipsam*, and so far as they go to show the intentions of the parties as manifested by the pleadings: but the oral testimony taken in such cases is not evidence unless specially offered in the case pending.

7. Certified abstracts from the office of the register of conveyances, made in the usual form of such certificates, are admissible in evidence to prove the inscription of the acts to which they refer. *Andrew Erwin* v. *The Bank of Kentucky*, 1.

8. Under the act of 25th of March, 1828, a certified copy of a sheriff's deed recorded in the office of the clerk of the court is admissible in evidence, without accounting for the absence of the original. *Davis et al.* v. *Wilcoxen*, 583.

III. *Of Parties.*

9. Where the answers to interrogatories propounded to a party in a suit on oath, are manifestly evasive, they may be taken as confessed against the party answering. *Graham et al.* v. *Benjamin et al.* 186.

10. The answer of a party to interrogatories on facts and articles may be overthrown by the testimony of two witnesses, or one corroborated by strong circumstantial evidence, or by written proof. *Fletcher* v. *Fletcher*, 406.

11. The admission of contradictory statements of a witness made to third persons on some former occasion, for the purpose of raising suspicions as to the truth of his testimony, is not allowed, unless the witness whose testimony has thus been sought to be impeached has been first interrogated as to the contradictory statements which are adduced against him. This applies with double force to a party whose answers on oath are sought to be contradicted. *Ib.*

12. The court are not aware of any means under our practice by which a party answering can be thus protected, but it certainly is necessary in cases of this kind, for the testimony establishing contradictory statements by the respondent to be received with caution, and examined and weighed under the severest scrutiny. *Ib.*

IV. *Of Evidence generally.*

13. In a suit between A. and B. in which A. claims certain property, by virtue of certain conveyances which B. alleges to be simulated, the acts, sayings and declarations of C. who made the conveyances to A., are proper evidence. *Andrew Erwin* v. *The Bank of Kentucky*, 1.

14. Parol testimony of the freedom of a colored person is admissible when the evidence shows the witness was born free. But if the witness had been born a slave and afterwards manumitted, the question would have been different. *State* v. *Levy & Dreyfous*, 64.

15. Evidence of the acknowledgment of the mother is admissible to establish the filiation of the child; and the declaration of the mother in relation to the maternity of the child, made at a time not suspicious, are admissible in evidence to prove the filiation of the child. C. C. 214. *O'Blennis* v. *Corri*, 101.

16. Where a party uses concealment or remains silent when it was his duty to speak, and thereby thinks he has acquired an advantage which he seeks to enforce, he is estopped by the line of conduct he has seen fit to pursue from succeeding in such action. *Freeman* v. *Savage*, 2d Ann. 269, affirmed. *Meux* v. *Martin*, 107.

17. Where a judgment creditor has slept on his rights for a long course of time, it is a circumstance which corroborates and strengthens the testimony of a witness in proof of payment. *Heirs of Davenport* v. *Labauve & Landry*, 140.

18. In a suit for rent, where no express contract is alleged, the defendant may, under the general issue, introduce evidence to show that the premises were to be occupied

without the payment of rent. *Courtney* v. *Hunt*, 174.

19. Where evidence is received in the court of the first instance without objection, and no motion was made to strike it out, it cannot be rejected by the court, upon the ground that the witness disclosed the fact that the proof rested upon written orders and papers which were not produced or called for. *Ames* v. *Peoples' Telegraph*, 183.

20. There is no other mode provided for the service of interrogatories upon a party not appearing in court by counsel, than the fictitious one of posting. If such service as is required on citations be relied upon, it must be shown that the service upon an absent party was made at the domicil of the absentee. *Medley* v. *Wetzler*, 217.

21. Parol testimony will not be received to contradict a written release or establish title to real estate, as being part of a community property. *Morgan* v. *Morgan et al.* 230.

22. The consideration of a receipt may be explained by testimony. *Bass* v. *Balph et al.* 235.

23. Where the act of sale of slaves is silent as to the possession, it may be proved by parol, *Ib.*

24. Entries in books, or memoranda made by persons in the discharge of their professional duties and who are not interested, are admissible in evidence, if made in the course of their business and contemporaneously with the transactions to which they relate, where such persons have subsequently died. *Lathrop, Administrator,* v. *Lawson et al.* 238.

25. Parol evidence is inadmissible to establish a modification of a written agreement, or to establish a subsequent parol agreement inconsistent with the written one. *Barthet* v. *Estebene*, 315.

26. Where a plat of a survey was annexed to interrogatories, and filed in the clerk's office, it is not necessary that a copy of the plat should also be served on the opposite party to render the evidence taken under the interrogatories admissible. *Dwight* v. *Richard*, 365.

27. If a man stands by and is silent while his own property is being sold, and suffers another to become the purchaser, he is estopped from disputing the title thus acquired, and his heirs and those claiming under him are likewise estopped. *Blanchard et al.* v. *Allain et al.* 367.

28. Judgments rendered by the State courts are evidence, although the whole record be not introduced. *Judson, Administrator,* v. *Connolly and Husband*, 400.

29. A deed made in Mississippi is regarded in Louisiana as a private instrument in writing, which like any other receipt for money paid is not conclusive between the parties, but is open to explanation by evidence. *Fletcher* v. *Fletcher*, 406.

30. Irrelevant testimony should not be received in evidence. *May* v. *Ransom*, 424.

31. An inventory is not such an instrument as may not be contradicted by parol proof, even where the party who seeks to contradict it was present at the taking of the inventory, and signed it as one of the witnesses. The notary who took the inventory is also a competent witness to prove that notes included therein had been previously paid. *Derouin* v. *Segura*, 550.

32. The acknowledgment of the correctness of an account is not conclusive against the correction of gross errors in fact, or mistakes as to the legal rights of the parties. *Succession of Key*, 567.

33. Where the plaintiff had alleged a contract for making three hundred thousand bricks, and on the trial offered in evidence a contract for the making of two hundred thousand, and as the defendant was not taken by surprise and could suffer no injury from the admission of the contract in evidence, it was improperly rejected by the lower court. *Sittig* v. *Nash*, 575.

34. The principle that a party is not permitted to contradict by parol proof a notarial act of sale, does not apply to a married woman who seeks to set aside an act purporting to be an act of sale, upon the ground that it was in fact a disguised donation to her husband. *Thibodeaux* v. *Herpin*, 578.

35. To render a certified copy of a deed admissible in evidence under the act of Congress of 1804, it is not necessary that the attesting officer should certify that the instrument so certified would be admissible in the State in which the certificate is given. *Francis* v. *Scott et al.* 668.

36. Parol evidence is inadmissible to explain the intention of a written instrument, where the language of the instrument is intelligible. *Sewall* v. *Roach*, 683.

37. Where a note is signed by the mark of the drawer, he not being able to write, proof of the handwriting of the subscribing witness, and that he is dead, is sufficient evidence upon which to confirm a judgment by default. *Chaffe* v. *Cupp*, 684.

38. Testimony by the plaintiff's attorney that he presented the account to defendant who did not object to the correctness of the account, but stated he intended to keep the plaintiff out of the bill as long as he could, does not amount to an acknowledgment of the correctness of the account. *Blanc* v. *Forgay*, 695.

39. The court will not heed the opinion of port wardens as to the cause of damage, when all the facts are in evidence upon

which that opinion was founded. *Holland* v. *Cammett et al.* 705.

EXECUTION OF JUDGMENTS.

1. Where the act of mortgage describes the land as containing six hundred and forty acres, the mortgagee will not be allowed to proceed to sell the property under an order of seizure and advertisement, describing the land as containing six hundred and forty superficial arpents. *Wright* v. *Roussell*, 126.

2. A debt may be seized on execution by notice served upon the debtor; and in the same manner a thing not susceptible of corporeal tradition may be seized by seizure in the hands of the keeper thereof, if the instrument evidencing the debt or right be not negotiable. *Harris* v. *Bank of Mobile*, 538.

3. By the charter of the Mechanics and Traders' Bank, all transfers of stock are to be made upon the books of the bank. The certificates of stock are not, therefore, negotiable; and a seizure on execution of stock by notice to the officers of the bank is valid, and defeats a subsequent transfer of the stock. *Ib.*

4. The horse of a physician is liable to seizure on execution, and is not exempted by C. P. 644. *Hanna* v. *Bry et al.* 651.

5. The proper mode of seizing on an execution a debt existing in the form of a judgment is, by a notification of the seizure by the sheriff to the judgment debtor; and such notification is effected by the process of garnishment served upon the judgment debtors. *Ib.*

5. Where an execution has been returned satisfied, another execution cannot be issued for costs, without taking some proceeding contradictorily with the debtor; and a sale under an execution so issued will be declared null. *Brooks* v. *Hardwick et al.* 675.

See Sheriff. Also Judgment.

EXCEPTIONS.

See Practice.

EXECUTOR.

See Successions.

EXECUTORY PROCESS.

See Practice.

EXPERTS.

See Auditor, Experts, &c.

FACTOR.

See Mandate.

FIERI FACIAS.

See Execution of Judgment.

FIDEI COMMISSUM.

See Donations.

FREIGHT.

See Common Carrier.

FOREIGN LAWS.

See Law. Also Conflict of Laws.

FRAUD.

See Obligations. Also Insolvency.

GARNISHMENT.

1. Where the defendants had garnisheed the plaintiff in a suit instituted by attachment against a third person, and in answer to the garnishment the plaintiff admitted an indebtedness; and the defendants insisted upon a stay of judgment until the plaintiff had deposited in court the funds garnisheed in his hands: *Held* by the court, that these circumstances did not authorize the clogging of the judgment against defendants with any such condition. *Brown* v. *Lowe & Pattison*, 34.

2. A party on a negotiable draft originally given to the defendant, cannot be held liable on a garnishment, when it appears that the defendant no longer holds the draft. *Ross, Tutor*, v. *Savoy et al.* 162.

3. Where the debtor of a corporation is garnisheed upon a debt which was payable in the notes or obligations of the corporation, he cannot be condemned to pay the amount of the debt in current funds. The judgment should be that he pay in the notes or obligations of the corporation, within a certain specified time, or that he shall, in default, pay a certain sum of money. *Marshall* v. *Grand Gulf Railroad Company*, 360.

HUSBAND AND WIFE.

I. *Marriage.*

1. Promises of marriage to constitute a valid contract need not be in writing. *Morgan* v. *Yarborough*, 316.

2. To constitute a contract founded upon a promise of marriage there must have been an acceptance of the promise, but it is not indispensible that the proof of the acceptance be direct; it may be inferred. *Ib.*

3. Marriage, like other facts, may be proved by any species of evidence not prohibited by law, and which does not presuppose a higher species of evidence within the power of the party. *Beaulieu, f. m. c.*, v. *Ternoir, f. m. c., et al.* 476.

II. *Separation from Bed and Board.*

4. Where the conduct of the plaintiff has been marked by continued exasperation and violence towards the defendant without any just cause of provocation, the plaintiff cannot obtain a decree of separation from bed and board for defamatory language of the defendant.

5 The evil complained of may cease with the reformation of the plaintiff. *Lalande* v. *Jore*, 32.

III. *Dotal and Paraphernal Property.*

6. Where a married woman shows that she had the means under her own control to purchase a certain property, and the property was purchased in her name, the act of sale stating it to have been so purchased by funds inherited by her from her father, it is not necessary that she should prove the identity of the money paid for the property, in order to prevent the creditors of her husband from subjecting it to the payment of his debts. *Ellis, Syndic*, v. *Rush*, 116.

7. The wife is liable for work done on her paraphernal property, which was beneficial to it. *Dailey et al.* v. *Pierson and Wife*, 125.

8. Under the Code of 1808, although the words, "*dowry*, settlement, and constitution de dot," are not sacramental, or essential in the designation of property as dotal in marriage contracts. yet the intention to make the property dotal must be clearly expressed in the instrument. The paraphernal character of the wife's property is the general rule; and dotal the exception.

9. The Code of 1825 uses broader language than the Code of 1808, in declaring what property is to be considered dotal. C. C. 2318. *Succession of Rivet*, 142.

10. The law forbids the transfer of paraphernal property by the wife to pay the debts of the husband, or the debts of the community which he was bound to pay. *Provost* v. *Provost*, 572.

11. A wife who has obtained a separation of property from her husband, is entitled to a mortgage for her paraphernal property only on the real estate of the husband. *Broussard* v. *Dugas et al.* 585.

12. The wife is entitled to a mortgage upon her husband's real estate for her paraphernal property from the time it was received by him. *Ib.*

13. A wife may receive a conveyance of property to her from her husband in payment of dotal and paraphernal funds for which he is liable to her. C. C. 2421. *Adlé* v. *Anty*, 631.

14. Where the wife claims property as paraphernal, which was purchased in her name during the existence of the community, she may show the fact, although the notarial act of purchase is silent upon the subject. *Squire* v. *Stockton*, 741.

15. Property purchased by the wife in her own right and name, and paid for out of her paternal inheritance, is paraphernal property. It is not changed to community property by the circumstance that the heirs, in order to affect a partition, agreed to a sale of all the property, each one being allowed to substitute notes for their purchases at the sale, with the understanding that those notes were to be deducted from the share coming to the heir. *Ib.*

IV. *Community.*

16. The surviving husband has, under the act of 25th of March, 1844, the usufruct of the community property during his life, but this does not entitle him to the administration which belongs to the tutor of the minor children. C. C. 1037, 1114. *Succession of Brinkman*, 27.

17. Article 338 C. C. is not repealed by the act of 26th of March, 1844, allowing the surviving husband or wife the usufruct of the community property; and the surviving husband may take the community property at its appraised value. upon complying with the necessary formalities, and giving the requisite security. *Succession of Hebert*, 121.

18. Under the Code of 1808, where the right to acquire property existed before a marriage although it may not have been acquired until after, the property does not enter into the community. But if paid for out of community funds. the price must be reimbursed to the community. O. C. C.

p. 336, art. 64. *Barbet* v. *Langlois and Husband*, 212.

19. Under the Code of 1808, where the husband had a right to enter a back concession of land before his marriage, but did not do so until after, the land belongs to his individual estate and does not enter the community. *Ib.*

20. The wife is entitled to one-half of the community property, and where, four years after her death, the husband surrenders his property under the insolvent laws, her heirs may recover from the syndics the share of the community to which she was entitled. *Smith, Tutor*, v. *Syndics of Dorsey*, 381.

21. The interest of a deceased wife in the community is vested in her heirs upon her death. *Heirs of Guillotte* v. *City of Lafayette*, 382.

22. A married woman who has not renounced the community is presumed to be a partner in the community, and is not permitted to apply the partnership assets to her individual claims, to the prejudice of the creditors of the community. *Succession of Dejean*, 593.

23. Where the wife claims property acquired after the marriage as her separate property, and does not show her right to acquire separate property, it will be presumed that the property belongs to the community. *Provost et al.* v. *Delahoussaye et al.* 610.

24. As a general rule, property purchased by either husband or wife during the existence of the community belongs to the community; and if the price be paid out of the separate funds of either, that one becomes a creditor of the community for the amount. *Young* v. *Young*, 611.

25. Children born of slaves which are separate property do not enter into the community of acquets. *Ib.*

26. Where, upon the death of the husband, the wife retains possession of the entire community, (there being no issue of the marriage,) she is responsible to the heirs of the husband for the rents and profits of their share of the community from the date of his decease. *Heirs of Landry* v. *Heirs of Duaron*, 612.

27. The increase of animals inure to the benefit of the community of acquets. *Bonner* v. *Gill et al.* 629.

28. The conversion of property which renders a widow liable for the debts of the community, must be fraudulent and done with the view of appropriating to her own use property which she knew belonged to the estate of her deceased husband. *Ib.*

29. This conversion must have also occurred prior to her renunciation of the community to render her liable for the debts of the community; if done after the renunciation she incurs no greater penalties than other persons would who had done the same things. *Ib.*

30. Property purchased by the husband with the wife's paraphernal funds becomes community property, and may be sold for the debts of the community. *Deas et al.* v. *Seale et al.* 688.

31. Where a wife as one of the heirs of a succession, consents to a sale to effect a partition, and at the sale the husband purchases the property, crediting the price on the share coming to the wife, the property is not paraphernal but community property. *Ib.*

V. *Of the Law of Husband and Wife generally.*

32. A. executed an obligation payable to a married woman in person. *Held* by the court, that from the form of the obligation, the thorough knowledge which A. had of the husband's affairs, and by the part he had taken in the attempt to conceal the community property, he was estopped from setting up the defence that the obligation was community property, and that he was entitled to offset the same with debts due to him by the husband. And when he had credited the husband's account with items which might have been chargeable to the wife, he will not be allowed to cancel such credits, and charge them to the wife. *Freeman* v. *Savage*, 2d Ann. 269—affirmed. *Florance* v. *Twichell*, 16.

33. In estimating the necessities of the wife so as to determine whether she be entitled to the *marital portion*, the condition of the deceased husband and the habits of life engendered by his fortune must be taken into consideration. *Dunbar, Widow*, v. *Heirs of Dunbar*, 158.

34. The right to claim the *marital portion* exists as well in those cases where there was no marriage contract as in those in which no dowry is stipulated in the marriage contract. C. C. 2359. *Ib.*

35. The wife is entitled to the *marital portion* whether the matrimonial domicil was in the State or out of it. The right results from the marriage, no matter where contracted, and the wife takes by inheritance as other heirs. *Ib.*

36. Where a married woman is sought to be made liable for a debt which she alleges was the debt of her husband, to render her liable, it must be shown affirmatively that the debt was for her benefit. Her being separated of property does not throw the burthen of proof on her, nor is she estopped from setting up the defence by her acknowledgment of the indebtedness in an act of mortgage. *Erwin* v. *McCalop et al.* 173.

37. Where the husband holds funds as belonging exclusively to his wife, without any knowledge on the part of the wife of his holding the funds for her, third persons who have a better right to those funds may recover judgment against the husband, but cannot against the wife. *Graham et al.* v. *Benjamin et al.* 186.

38. The nullity of the contract of the wife, resulting from the want of authorization on the part of the husband, rests upon the same rule as that of other nullities, which are in the interest of persons, and strictly relative. Such contracts are rendered valid by the subsequent ratification of both husband and wife. *Roberts* v. *Wilkinson et al.* 369.

39. The concurrence of the husband with the wife, in the execution of a mortgage to secure the payment of a note signed by her without his authority, is a ratification of her contract, and renders her liable for the note. *Ib.*

40. A married woman, authorized by her husband, may become surety for a third person. *Ib.*

41. The doctrine of estoppel by matters in *pays* is seldom, if ever, applied to married women. *Heirs of Guillotte* v. *City of Lafayette*, 382.

42. A married woman cannot make a contract of sale or donation without the authorization of her husband. *Hagerty* v. *Corri*, 433.

43. Property transferred by the husband to his wife to replace property of hers which he had sold, may be conveyed by an ordinary contract of sale. *Rabassa* v. *Castein et al.* 493.

44. Married women who enter into joint and several obligations with their husbands to the Canal Bank are bound by such obligations, under the 23d section of the charter of that bank. *Ledoux & Co.* v. *Rucker et al.* 500.

45. Married women are not, as a general rule, bound by contracts entered into jointly and severally with their husbands, unless it be shown that such contracts inured to their benefit. *Ib.*

46. A married woman who has given a mortgage upon her paraphernal property to secure advances which, in the act, she acknowledges to have inured to her benefit, is not thereby estopped from showing that the advances were not for her benefit, and that she is not bound by the act of mortgage. *Patterson* v. *Fraser and Wife*, 586.

47. A wife may acquire separate property by the *bond fide* investment of her paraphernal funds of which the husband had not the administration; so property purchased by the husband with his separate funds, under circumstances manifesting a clear intention to purchase it for his separate account, may be regarded as his separate property. *Young* v. *Young*, 611.

48. When slaves are purchased by a husband in a State where they are personal property, with the intention of bringing them to Louisiana, where he and his wife are domiciliated, their respective rights must be decided by the laws of Louisiana. *Ib.*

49. The wife when judicially attacked must be aided by her husband, or the proceedings are not obligatory upon her. *Adlé* v. *Anty et al.* 631.

50. Where a married woman brings a suit and obtains a judgment without the authorization of her husband, and the defendant appeals, she cannot have the appeal dismissed because her husband was not cited with her to answer the appeal. In such a case, the cause will be remanded to enable the wife to obtain the authorization of her husband to institute the suit. *Stone* v. *Seymour*, 647.

51. Under the act of 28th of March, 1840, an administratrix may purchase at the sale of the effects of the deceased whose estate she represents, when she is the surviving partner in community, or an heir, or legatee of the deceased. *Fristoe* v. *Burke*, 657.

52. Where the husband has authorized the wife to take a suspensive appeal, which was dismissed on account of the insufficiency of the surety, and she takes a second devolutive appeal without the express authorization of the husband, the authorization for the first appeal will be sufficient to sustain the second. *Succession of McKinney*, 748.

HYPOTHECARY ACTION.

See PRACTICE.

INDICTMENT.

See CRIMINAL LAW, PROSECUTIONS.

INJUNCTION.

1. Where the judgment enjoined bears the highest rate of conventional interest, no other interest will be allowed upon the dissolution of the injunction. *Andrew Erwin* v. *Bank of Kentucky*, 1.

2. The surety for the plaintiff in an injunction is a party to the suit, and will not afterwards be permitted to make allegations inconsistent with his position as a party to that suit. And when it is subsequently ascertained that he was the real owner of the execution enjoined, but which

was prosecuted in the name of another person, for his benefit, the judgment will be declared extinguished, and property previously sold under the judgment restored to the original owner. *Denton* v. *Erwin*, 18.

3. It is the duty of the courts to mulct in exemplary damages those who wantonly abuse the equitable remedy of injunction. *Dorsey* v. *Vaughan et al.* 155.

4. Where a party takes out an injunction against a sale under execution, for a clerical error in the publication of the advertisement, and the sheriff re-advertises the sale properly for a more distant day, and the party comes forward and bonds the property, it will be considered as an abandonment of the injunction. *Beard et al.* v. *Gresham et al.* 160.

5. Where the petition for an injunction alleges no injury to the petitioner, nor any apprehension of injury, there is no equitable ground for the injunction, and it should be dissolved. *Beard et al.* v. *Gresham et al.* 167.

6. Where the defendant moves to dissolve an injunction for matters appearing on the face of the record, the court may allow damages under the act of March 25th, 1831. The plaintiff cannot, by submitting to a non-suit, avoid the damages which are to be regarded as a claim in reconvention. *Ludwig* v. *Kohlman*, 298.

7. Where the defendant in an injunction prays for the dissolution of the injunction for damages, the plaintiff cannot avoid the damages by absenting himself, and suffering a non-suit as to the injunction. *Robertson, Trustee*, v. *Travis*, 401,

8. An agreement between the seizing creditor and the debtor as to the terms of sale does not exempt the debtor from damages, under the act of March 25th, 1831, in case he sues out an injunction against the sale. *Ib.*

9. Where the consideration of a note given by a married woman is not shown by the evidence to have been employed for her separate use, in something which the husband was not bound to furnish, she ought not to be held liable for the note. *De Gaalon* v. *Matherne*, 495.

10. An execution cannot be enjoined by an unliquidated claim for damages. In such a case compensation could not take place. C. C. 2205. *Smith* v. *Foster*, 551.

11. An affidavit for an injunction, in which the affient states that "the allegations set forth in the foregoing petition are substantially true and correct, according to the best of his belief," is sufficient. *Haydel* v. *Nixon*, 558.

12. The only cases of injunction which are to be tried summarily are those in which no security is required. C. P. 739, 740, 741. In all other cases of injunction the parties are entitled to a trial by jury, if they comply with the legal requisites. *Cummings* v. *Police Jury of Rapides*, 634.

13. Where an execution has been issued in one parish, directed to the sheriff of another, it may be enjoined in the courts of the latter parish. *Copley* v. *Edwards et al.* 647.

14. A judgment cannot be enjoined on an unliquidated claim for damages against the judgment creditor, where this objection to the injunction is specially pleaded, and the judgment is for a specific amount. *Ib.*

15. An execution cannot be enjoined on grounds of which the party was cognizant before judgment was rendered against him. *Livingston* v. *Winfree, Sheriff*, 670.

16. Where an execution which has been issued in a case entitled to preference is enjoined, the preference must be extended to the injunction case. *Maxwell* v. *Mallard, Armistead et al.* 702.

17. Where the judgment enjoined bears five per cent interest, only three per cent additional interest should be allowed upon the dissolution of the injunction. *Ib.*

INSOLVENCY.

1. When the syndic sues in affirmance of the surrender, he exercises for the benefit of the creditors all the rights of the insolvent, who so long as his debts are unpaid, has no interest in the property surrendered. *Degruy* v. *His Creditors*, 39.

2. The State insolvent laws do not extend to a contract made in another State, and to be there executed between citizens of other States; and a discharge under those laws does not extinguish the remedy against the future property of the debtor who has taken the benefit of them. *Fisher, Burgess & Co.* v. *Wheeler & Ellis*, 271.

3. The laws of Louisiana relating to the voluntary surrender of property by insolvent debtors, date no further back than 1817. They are consequently controlled by the inhibition contained in the Constitution of the United States against the passage of laws by the States impairing the obligation of contracts. *Ib.*

4. A syndic acquires from an insolvent no greater rights than the insolvent himself possessed; and where the insolvent had surrendered all his interest in certain lots, and the syndic sells in conformity with that description, the purchaser cannot claim a fourth interest which the insolvent had previously conveyed, although the title had not been recorded in the parish where the property was situated. *Campbell* v. *Slidell*, 274.

5. The proceeding to compel an insolvent to make a surrender of the property he has acquired since his cession of property, cannot be prosecuted by a rule against him taken in the original insolvent proceedings, but must be conducted as an ordinary suit, by petition and citation in the court of the parish in which the insolvent is domiciliated. *Florance* v. *His Creditors*, 391.

6. Under the article 1980 C. C. insolvency may be proved as any other fact. *Judson* v. *Connolly and Husband*, 400.

7. Under the act of 13th of March, 1837, the functions of a syndic do not cease until the estate is finally wound up; and the homologation of a tableau filed by the syndic does not operate his discharge so long as there are funds which are not distributed. Whether or not there be such funds in the hands of the syndic, is a matter to be determined from the evidence. *Williams, Syndic* v. *Heirs of Nicholson*, 719.

INSURANCE.

1. Where a house is destroyed by a riotous assemblage, and there is a clause in the policy excepting a loss of that character, the insurance company is not liable for the loss. It is, in such a case, immaterial that the rioters assembled originally for a lawful purpose, but afterwards were guilty of a riot. *Dupin* v. *Mutual Insurance Co.*, 482.

2. It is not necessary, in order to exempt an insurance company from liability for loss by a riot, that the guilt of the rioters should have been first established by a criminal prosecution. *Ib.*

3. An insurance on account of whom it may concern, is limited to those who have an insurable interest in the property, and may be lawfully insured, and must further be restricted to those for whom it was intended, under their prior authorization, or subsequent adoption. *Frierson* v. *Brenan*, 540.

4. Where A. had purchased a steamboat at sheriff's sale, and subsequently had run her for several years as his own property and on his own account, insured her for account of whom it may concern, it will be presumed he did so for his own benefit, and he will be entitled to recover the insurance, although there may be a contest as to the validity of his title to the vessel. *Ib.*

5. Where an Insurance Company seeks to avoid liability for a loss, upon the ground that the lost merchandise was included in the policy by mistake, the mistake must be made out by the clearest evidence. *Woodruff* v. *Columbus Insurance Company*, 697.

6. Where an Insurance Company accepts a risk, by merely writing on the application, "Taken at three per cent premium," the company will be held to the same liability as if a formal policy had been executed. *Ib.*

7. Where a policy for tobacco shipped states that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored or mouldy, unless the same be caused by actual contact of sea water with the articles so damaged, it is incumbent on the plaintiff to show that the damage occurred in that manner. *Leftwitch* v. *St. Louis Perpetual Insurance Company*, 706.

8. If the underwriters be responsible for a partial loss, it is with reference to the market value at the port of departure. *Ib.*

IMPUTATION OF PAYMENT.

See PAYMENT.

INTEREST.

1. A factor cannot charge a commission of two and one-half per cent for advancing, and eight per cent interest on the money advanced. The charge for the commission is usurious. *Lallande* v. *Breaux & Matherne*, 505.

2. An agreement to pay eight per cent interest on a draft from date if not paid at maturity, is legal and binding on the party promising. *Ib.*

3. Usury forfeits the whole interest. *Ib.*

4. An agreement to extend a draft for a certain time upon usurious interest, does not forfeit the right of recovering the lawful interest which the draft originally drew. *Ib.*

5. A written approval of an account upon which interest is charged at eight per cent, estops the party from disputing that item; but such an assent does not amount to an agreement to pay interest at the same rate thereafter. *Ib.*

6. A factor is not allowed to charge two and a half per cent for a cash advance, and eight per cent interest. *Patterson & Co.* v. *Leake & Tucker*, 547.

7. Where a party sells an interest in a plantation for $100,000, payable in twenty annual installments, with interest at seven per cent, and takes notes for the principal and also for the interest, the interest runs after the maturity of the notes only on the notes for the principal sum; and does not run on the interest notes. A stipulation that the interest notes shall bear ten per cent interest after maturity does not render the original contract usurious. *Executors of Compton* v. *Compton*, 615.

8. There is no distinction as to whether interest be usurious or not, between the interest stipulated upon the price for which property is sold and the interest which may be stipulated for the loan of money. *Ib.*

9. Usury is a violation of law and is not to be presumed. Where an agreement to pay interest is subject to two constructions, one of which would make it usurious and the other not, the court will adopt the latter. *Succession of Johnson*, 682.

10. The rule by which partial payments are to be credited is, to calculate interest on the debt to the date of the partial payment, and deduct the payment from the aggregate sum, allowing the balance to bear the stipulated interest. This rule applies only when the payment exceeds the interest due. *Estebene* v. *Estebene*, 738.

INTERROGATORIES ON FACTS AND ARTICLES.

See Evidence of Parties.

INTERVENTION.

See Practice.

JUDGMENT.

1. In the absence of any evidence, either impeaching a judgment obtained in the State of Pennsylvania, or going to show that it had not, under the laws of that State, the effect of a final judgment, the court is bound to consider it as having the force of the thing adjudged. *Rowland* v. *Jarvis*, 43.

2. Where the judgment of the court does not decide certain issues made in the pleadings, it will not support the plea of *res judicata* in relation to the matters embraced in those issues. *Fink, Executor* v. *Martin et al.* 103.

3. The reasoning and the opinion of a court upon a subject on the evidence there adduced, does not have the force and effect of the thing adjudged, unless the subject matter is definitively disposed of by the decree of the court. *Pepper et al.* v. *Dunlap*, 200.

4. If the sheriff's return of personal service of citation upon the defendant be proved to be untrue, it is sufficient ground for sustaining an action of nullity against the judgment thus obtained. *Sloan* v. *Menard*, 218.

5. A debtor upon a twelve months' bond, taken at a sheriff's sale, is not a judgment debtor. *Perkins* v. *Bank of Louisiana*, 222.

6. Where a judgment rendered in a common law State against two persons does not state that it is not rendered against them *in solido*, a subsequent recognition by a party of its solidarity, will sanction that interpretation of the judgment. *Bonaffe & Co.* v. *Lane*, 225.

7. Where the judgment of the court dissolving an injunction and awarding damages is written out with all the necessary specifications, and the clerk only records on the minutes that the injunction was dissolved with damages, the irregularity of the entry on the minutes is not sufficient to annul the judgment. *Robertson* v. *Travis*, 401.

8. Where an account of a curator has been homologated, and he ordered to proceed with the administration, without the heirs having been cited, the judgment is not final between the heirs and the curator. *Succession of McLean*, 671.

9. A judgment in favor of heirs against their mother who was also their tutrix, is only *primâ facie* evidence of her indebtedness to them, and does not bind her creditors if they can show the amount was not due. *Timberlake* v. *Brand*, 715.

See also Execution of Judgments.

JURY.

When a sufficient number of the regular panel of the jury are not present, the court is authorized to direct the sheriff to summon talesmen and proceed with the trial of the case, notwithstanding attachments are out for the absent jurors. *Barthet* v. *Estebene*, 315.

LANDS.

1. Congress has the full power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Government in reference to the public lands declares the patent to be the superior and conclusive evidence of legal title. Until it issues the fee is in the Government. A State has no power to declare any title less than a patent valid against a claim of the United States, or against a title held under a patent granted by the United States. *Foley* v. *Harrison*, 75.

2. Instructions from commissioners of the general land office to registers and receivers, are not judgments binding upon any one. *Ib.*

3. A claim based upon a patent obtained from the State, under the act of 24th of March, 1844, must yield to a patent obtained from the government of the United

States, under the preëmption laws passed by Congress, approved on the 29th of May, 1830, and revived and continued in force in 1844. *Ib.*

4. The act of the 4th of May, 1847, establishing an office for the sale of the State lands at Winnsborough, did not authorize at that office the sale of any lands which had not been previously located by the State. *Williams* v. *Robinson and Randolph*, 110.

5. An agreement under private signature, not recorded, between A. and certain other persons, that lands purchased by him in his own name are to be conveyed to them, can have no effect against third persons. The apparent title being in A., the property is bound for judgments recorded against him. *Robertson, Trustee*, v. *Wood et al.* 197.

6. The respective rights of parties claiming land under the preëmption law of Congress of 4th of September, 1841, must be determined by the register and receiver of the U. S. land office, subject to an appeal to the treasurer of the United States. *Courtney* v. *Perkins*, 216.

7. The possession of a party under a certificate that he had filed proof of his right to preëmption with the register and receiver of the U. S. land office, is not sufficient to maintain the possessory action against another person who holds a similar certificate of subsequent date, and who is in actual possession of the land. *Ib.*

8. Where one sells any right, title, or interest he may have in a claim of certain lands against the United States, without any warranty against third persons, the claim not being recognized by the United States, there is no law requiring the registration of such a conveyance in the office of register of conveyances in the parish where the land is situated. The land office of the United States for the district is the office in which such a claim should be filed or registered. *Heirs of Bastable* v. *Curry*, 411.

9. To sever lands from the public domain, their specific boundaries must be so designated by survey, or otherwise, as to enable the court to ascertain them. *Ledoux & Co.* v. *Black et al.* 510.

10. Lands in Louisiana not severed from the public domain under the Spanish Government, may be held by an adverse title, derived from the United States. *Ib.*

11. Until a patent issues the Government never so entirely divests itself of title as to be precluded from setting aside an entry which conflicts with private claims; and the court cannot revise the decision of the commissioner of the general land office cancelling a certificate of entry. *Haydel* v. *Nixon*, 558.

12. Improvements on the public lands are not real estate. *Broussard* v. *Dugas et al.* 585.

13. A confirmation by act of Congress is a title upon which the claimant can maintain a petitory action. *Morrough, Administrator*, v. *Moss*, 601.

14. The Government of the United States was bound by the treaty of cession of Louisiana from France, to protect the private property of the inhabitants. This obligation was recognized by various acts of Congress. A claim to land held under the grant to *Bastrop* was property which the United States, under the treaty and acts of Congress, could not disregard until the claim had been finally disproved of by Congress, and a purchaser from the United States could acquire no rights by his purchase. *Morrison* v. *Whetstone*, 636.

15. Where a party holds lands under a claim confirmed by act of Congress, he will be protected from a claim under a certificate of the receiver of the land office, showing an entry of a date subsequent to the original claim; and the party in possession under such a claim may plead prescription. *Copley* v. *Edwards et al.* 647.

16. Where both parties claim title to land from a common author, the only question which can be inquired into is, in which of the parties is the title of their author vested. *Cotton* v. *Stacker*, 677.

17. A defendant in possession, under a just title for a valuable consideration, may avail himself of any radical defect in the title of his adversary. *Chewning* v. *Johnson*, 678.

18. Where the consideration of a promissory note was the sale of improvements upon the public lands, it will be presumed, unless the contrary be shown, that the vendor was a settler to acquire a preëmption, and not a trespasser upon the public lands, and the consideration is good. *Price* v. *Curran*, 686.

19. The sale of improvements upon the public lands, where the vendor is in a situation to acquire a preëmption right, is a good consideration for a promissory note. *Norman and Trousdal* v. *Ellis and Wright*, 693.

20. At the period of history when it was usual to surround cities with walls and fortifications, to prevent their uses as defences from being interfered with, it was customary to leave an open space outside of the walls, which was not allowed to be granted as private property. This custom was observed in the founding of the city of New Orleans. *Heirs of Villars* v. *Kennedy*, 724.

21. The decisions of the Spanish Governors of Louisiana upon questions of title, as they were vested with judicial as well as

executive powers, were final judgments which sustained the plea of *res judicata*. *Ib.*

LAW.

1. Courts do not notice the revenue laws of foreign countries, and contracts having for their object the violation of those laws may be enforced. *Kohn* v. *Schooner Renaissance*, 25.

2. Where the English and French texts of a law differ, the English text must prevail. *Williams* v. *Robinson and Randolph*, 110.

See Conflict of Laws.

LEASE.

1. The taking of a portion of the premises leased, for the construction of a levee, entitles the tenant to a reduction of the rent. *David* v. *Beelman*, 545.

2. The lessor has a privilege as well for rent not due as for rent due, and is entitled to that privilege in preference to a creditor who has made a seizure upon execution. C. C. 2675. *Robinson* v. *Staples*, 712.

3. The lessor is entitled to have the lease annulled if the lessee does not pay the rent. *Hennen* v. *Hayden and Kelly*, 713.

4. The lessor is bound for the expense of such repairs as decay renders necessary; but the lessee has no right to have such repairs made at his expense, unless the lessee has first put him in default. *Ib.*

5. The lessor's privilege extends to the horses and carts kept by the lessee on the leased premises. *Bazin* v. *Segura*, 718.

6. A contract by which a party is to pay an annual rent of six per cent on the cost of a building, with the privilege of becoming the owner on paying the price, creates the relation of landlord and tenant. *Municipality No. One* v. *General Council*, 761.

LEGACY.

See Successions.

LETTING OF LABOR OR INDUSTRY.

1. Where a party takes upon himself the selection of a person to do a certain job of work, he takes upon himself the risk of skill if the contractor employs the person thus selected. *Le Duff, f. m. c.* v. *Widow Porche and Carmouche*, 148.

2. Under article 2736 C. C. the proprietor has the right to cancel at pleasure the bargain he has made by paying the undertaker for the expense and labor already incurred, and such damages as the nature of the case may require. This authorizes the allowance of the profits the undertaker might have made by completing the work. *Forrest and Crocker* v. *Caldwell and Hickey*, 220.

3. Where the value of the services of slaves for a long series of years is claimed, the expenses of rearing the children are to be considered in reduction of the amount. *Marcos, f. w. c.*, v. *Barcas, f. m. c.*, 265.

4. Where the contractor fails to complete a building within the time specified in the contract, the owner, after putting him in default, may proceed to finish the building, and the money remaining in his hands after paying for the completion, is a fund out of which the privileged claims of material men, &c., may be paid. *Jorda* v. *Gobet*, 431.

5. The owner of a building being evicted under a contract, has no right to pay the contractor in anticipation of the term stipulated in the contract; if he does so, he renders himself liable to the claims of material men, workmen, &c., who have given him the requisite notice before the time expired. *Ib.*

LEVEES AND ROADS.

Under the act of 7th February, 1829, concerning roads and levees, the plaintiff, who furnished hands upon the requisition of the inspector, is entitled to compensation for closing a breach in defendant's levee. *Williams and Savage* v. *LeBlanc*, 125.

LICENSES.

See Tax.

LITIGIOUS RIGHT.

See Obligations.

MANDATE.

I. *Factor.*

1. Where third persons permit an advance to be made to A. upon a consignment by him of their property, on his own account and risk exclusively, and the proceeds of the sale of the property have been applied by the consignee with the assent of A. to his credit, on a previous debt, such third persons cannot recover from the consignees the proceeds of the sale, upon the ground that the property in fact belonged to them. *Duncan* v. *Blood et al.* 11.

2. Where a party receives paper which it was his duty to collect, and places the same for suit in the hands of a competent attorney at law, he will not be responsible for the opinions or directions of the attorney. *Joor, Curator*, v. *Sullivan*, 177.

3. A charge of two and one-half per cent for accepting a draft is consonant to usage and is legal. *Lallande* v. *Breaux and Matherne*, 505.

4. Where a planter obtains supplies from a factor, upon a contract to send the factor his crops for sale, and then violates his contract by sending his crops to another person, the factor is entitled to his commissions upon the value of the crop. *Ib.*

5. A planter who orders supplies to be shipped to him by a factor, without ordering them to be insured, must bear their loss, unless he can show that it was customary for factors to insure goods so shipped. *Patterson & Co.* v. *Leake and Tucker*, 547.

6. A factor who receives a promissory note in settlement of a debt due to him, will not be allowed to charge a commission for endorsing the same. But if the note had been negotiated for the drawer's benefit through the factor's credit, a commission would be allowed for the endorsement. *Ib.*

7. A factor, under the act of 23d March, 1843, amending C. C. 3184, has a privilege upon the crop of a planter for supplies furnished to him; and this privilege takes precedence of a seizure by a creditor on an execution. *Richardson* v. *Weiner & Co. et al.* 646.

8. It is not of the essence of mandate that it be gratuitous. The right of an agent to receive compensation may be inferred from the nature of the services, without any proof of an express agreement to that effect. *Waterman* v. *Gibson*, 672.

II. *Mandate Generally.*

9. Although a contract be made with one in his own name, if it be afterwards discovered that he acted as agent for another, the principal will be held responsible. *Carlisle* v. *Steamer Eudora*, 15.

10. The liability of municipal corporations for the acts of their agents is a general rule of law too well settled to be seriously questioned. *Johnson* v. *Municipality No.* 1. 100.

11. A power of attorney authorizing an agent to bring and carry on a certain suit, does not give that agent the power to represent the principal in a suit against him for damages for the wrongful issuance of an attachment in the first suit. *Barnes* v. *Profilet*, 117.

12. An agent cannot take property in payment of a debt due to his principal, without a special authority; and a payment so made, is no bar to the principal's right to recover the amount from the debtor. *Carter & Co.* v. *Wade*, 157.

13. A public notice in the newspapers directing "Any person having business with me during my absence will call on Mr. A. who is authorized to attend to my business during my absence," does not authorize the agent to bring the principal into court as defendant, and a judgment obtained by service of citation upon such agent may be annulled. The principal will not be considered as having acquiesced, even if he neglects to appeal after being notified of the judgment, but may resort to the action of nullity. C. P. 608, 606, 604. *Christine* v. *Chaney*, 219.

14. Where the cashier of a bank grants an extension of time to the principal debtor, upon the payment of a portion of the debt, and thereby discharges a surety, the bank, having received the money and the benefits of the acts of the agent, will be considered as having ratified them. *Perkins* v. *Bank of Louisiana*, 222.

15. Where the principal was present and acquainted with the acts of an agent, and a sale was made with the knowledge and consent of the principal, the agent who acted in good faith is not responsible to the principal for damages resulting from the transaction. *Barrett, Administrator*, v. *Zacharie & Co.* 253.

16. It is requiring too much of an agent who has acted in good faith to oblige him to determine, at his peril, difficult questions of law which have not been adjudicated in this State, and upon customs not judicially recognized. *Ib.*

17. Principals are responsible for the damages caused by the neglect and misfeasance of their agents. *Courmes* v. *Cavelier*, 276.

MARSHALL OF THE UNITED STATES.

1. No sheriff or United States marshal has the right, on an execution in favor of a third person, of taking away property on which the landlord has a privilege for rent, and selling the same, pending an injunction taken out by the landlord, without paying the rent for which the privilege exists. *Robb* v. *Wagner*, 111.

2. When the United States marshal has seized property, upon which a landlord has a privilege for rent, in a suit by a third person, and the United States Court has no jurisdiction of a third opposition of the case, on account of the citizenship of the parties, the landlord may proceed against the marshal in the State courts. *Ib.*

MARRIAGE.

See Husband and Wife.

MINORS.

I. *Tutors and Curators of.*

1. The surviving husband has, under the act of 25th of March, 1844, the usufruct of the community property during his life, but this does not entitle him to the administration which belongs to the tutor of the minor children. C. C. 1037, 1114. *Succession of Brinkman*, 27.

2. The court is not prepared to say that a tutor may not lawfully disclaim a title for his ward, when the claim is utterly without foundation, and the prosecution of it would involve the minor in expensive and fruitless litigation. *Degruy* v. *His Creditors*, 39.

3. As a general rule under-tutors are without authority to receive and control the assets of minors; but they have the right to employ counsel, and stipulate the necessary fee; to institute proceedings against tutors to deprive them of their tutorship and to protect the property of minors from waste. *Monget, Tutor*, v. *Tessier*, 165.

4. A succession inherited by minors may be administered by tutors, and a tutor may relieve an administrator from the further administration of the estate. *Hoover et al.* v. *Sellers*, 180.

5. Where a person has acted as tutor, and has been recognized as such by the probate judge, and where it is shown that the records of the court are in a state of great confusion and dilapidation, it will be presumed that he was properly qualified although the usual oath and bond cannot be found. *Ib.*

6. A mere intermeddler with minors' property is liable for the damages he causes the estate. But if his administration has been beneficial, and he has fairly accounted, he is not liable. *Bird, Wife of Laycock* v. *Black et al.* 189.

7. The mode of calculating interest on the capital to a payment, and then deducting the payment on the aggregate of principal and interest until the next payment, however small the payments, or short the intervals between them, is not admissible in a tutor's account. *Ib.*

8. If a tutor invests the minor's revenues once a year, and only when the surplus exceeds five hundred dollars, he complies with the law. *Ib.*

9. The code expressly provides that the expenses of a minor shall never exceed his revenues, without the authority of the court upon the advice of a family meeting. *Hubbell* v. *Hubbell*, 524.

10. He who pleads minority must establish the fact affirmatively. *Frierson* v. *Erwin*, 525.

11. Where a tutor neglects to give bond, it is his own fault, and cannot exempt him or his property from liability for his administration as tutor. *Gonsoulin et al.* v. *Migues et al.* 565.

12. A tutor owes interest on the balance due to minors from the day his accounts were closed. C. C. 353. *Ib.*

13. A mother who is turix of her children does not not owe interest on their shares, when the same is less than the value of the support and education of the children. *Timberlake* v. *Brand*, 715.

II. *Of Minors generally.*

14. Where a mother of minor children deals with a person as tutrix in matters relating to the estate, signs a receipt in her own name simply without adding as tutrix, it will be presumed that she acted as tutrix in signing the receipt. *Dickason and Husband* v. *Smith, Administratrix*, 196.

15. Where a family meeting is held under the act of 18th of March, 1847, for the emancipation of a minor, the tutor must be cited before the meeting is held. *Gerald* v. *Gerald*, 242.

16. Where a sale from a natural tutor to a minor child in payment of the amount due to the minor is annulled, the minor is entitled to interest on the sum from the time it became due, unless it is shown by the adverse party that the fruits received from the property before the sale was annulled were equivalent to interest. *Succession of Destrehan*, 483.

17. Where a family meeting convened after the second marriage of the mother of minor children, recommend her as tutrix, it is for the court and not the family meeting to prescribe the security to be given. *Webb, Under-tutor*, v. *Webb*, 595.

18. The mother should be trusted with the tutorship of her children if it be possible. *Ib.*

19. A woman who marries a second time without the consent of a family meeting, loses all right to the natural tutorship of her children. *Ib.*

20. A sale under execution does not affect a prior legal mortgage in favor of a minor. *Terrio* v. *Guidry*, 598.

21. The prescription of five years possession of a slave under a just title, is not applicable to a case in which a minor attempts to exercise upon the said slave a legal mortgage in favor of said minor. *Ib.*

22. The emancipation effected by the marriage of a minor does not qualify her to receive the appointment of administratrix. During minority she cannot bind herself for an amount exceeding her income. *Briscoe and Wife* v. *Tarkington*, 692.

MORTGAGE.

1. Where it is proved that the mortgage debts have been paid, it is not necessary to make the mortgagees parties to a proceeding for the erasure of the mortgages. *Andrew Erwin* v. *Bank of Kentucky*, 1.

2. Where the endorser of a promissory note has possession of it, notwithstanding there may be on it subsequent endorsements, it is *primâ facie* evidence that he is the true and lawful owner thereof; and if the note be secured to him by mortgage, he may proceed on it by executory process, without accounting for the manner in which he re-acquired possession of it. *Squier* v. *Stockton*, 120.

3. A party who purchasers certain lots of ground from one representing himself as the agent of A., and who executes his notes secured by mortgage upon the property in payment therefor, when sued by A. on the notes and mortgage, is estopped from setting up the defence that the agent was not authorized to accept the mortgage for A. *Ib.*

4. A mortgage given on all the property held in common appertaining to the succession of a deceased person, is invalid, for the want of a proper description of the property subjected to it. C. C. 3273, 3274, 3275. *Edwards* v. *Caulk et al.* 123.

5. An order of seizure and sale by executory process, cannot issue upon a mortgage unless there be authentic evidence of the acceptance of the mortgage by the mortgagee, C. C. 1794, 1796, 1803. *Yates* v. *Phipps*, 124.

6. Where the act of mortgage describes the land as containing six hundred and forty acres, the mortgagee will not be allowed to proceed to sell the property under an order of seizure and advertisement, describing the land as containing six hundred and forty superficial arpent. *Wright* v. *Roussel*, 126.

7. Where a bond in favor of a bank, secured by mortgage, was taken payable at the bank, it is not necessary that there should be authentic evidence of presentment and demand of payment at the bank, to entitle the bank to executory process. *Posey et al.* v. *Bank of Louisiana*, 187.

8. Recording a twelve months' bond in the mortgage office does not create a judicial mortgage. *Perkins* v. *Bank of Louisiana*, 222.

9. A mortgage bears on the estate but not on the gathered crops, unless the creditor has made a seizure before the crop is gathered. C. C. 457. *Bonaffe & Co.* v. *Lane*, 225.

10. The recordation of a decree rendering a foreign judgment executory in the office of recorder of mortgages creates a judicial mortgage. C. C. 3289, 3294, 3314, 3330, 3331. C. P. 545. *Ib.*

11. In a sale upon a first mortgage the purchaser holds the balance of the price subject to the subsequent mortgage. *Scott & Dunbar* v. *Featherston & Amis*, 306.

12. A sale under a concurrent mortgage does not extinguish the other concurrent mortgages. The sheriff has no right to receive the amount due on them, but only the *pro rata* share coming to the seizing creditor, leaving the balance in the hands of the purchaser subject to the other concurrent mortgages. *Ib.*

13. Where A. sells a plantation to B., who assumes to pay certain debts due by A., and gives a mortgage upon the property purchased, the mortgage is binding upon B. without any acceptance on the part of the creditors of A., so long as another arrangement between A. and B. be not made. *Ib.*

14. Where an order of seizure and sale issued for the payment in cash of one of the installments past due, and for the installments to become due, and before the sale a second installment fell due, for the payment of which a second order of seizure and sale was issued upon both orders being enjoined, the court dissolved the injunction, and decreed that the property should be sold for cash, all the installments having in the meantime fallen due. *Wright* v. *Richard*, 365.

15. The article 990 C. P., which requires that property of a succession which is sold to pay debts should bring its appraised value, does not apply to a sale of property on which there is a mortgage for Citizens' Bank stock. In such case, the sale, if made fairly, will be maintained when adjudicated to the highest bidder. *Succession of Haner.* 437.

16. A sale made under a consent decree has not the effect of a judicial partition and does not affect the rights of mortgage creditors. *Le Carpentier* v. *Le Carpentier*, 497.

17. Where the prayer of the petition asks that the property be sold for cash to pay one installment, and the balance of the price on a credit to meet another installment not due at the time, and the last installment falls due before the case is disposed of, the court may order the sale to be made for cash altogether. *Cleland* v. *Bideman*, 564.

18. The principle that there can be no sale on a *fi. fa.* unless the price bid exceeds the amount of prior mortgages, does not apply to judicial mortgages. *Settig* v. *Morgan*, 574.

19. Our code contains no express provision upon the prescription of legal mortgages. *Terrio* v. *Guidry*, 589.

20. Mortgages must be reinscribed within ten years, or parties who have in the meantime acquired rights upon the property mortgaged will be protected against the mortgage; and the pendency of an hypothecary action to subject the property to the mortgage, does not exempt the mortgage from the necessity of reinscription. *Adlé* v. *Anty et al.* 631.

21. A creditor who has a judicial mortgage upon property cannot prevent the sale of the property upon a subsequent judgment. C. P. 301, 403, 710. Nor can the purchaser refuse to pay the price until the prior general mortgage is cancelled, especially when it appears the judgment debtor has other property sufficient to pay the debt. *Young* v. *Municipality Number One*, 736.

NEW ORLEANS.

1. An ordinance of the municipality, prescribing the place for landing masts, spars, &c., on the Canal Carondelet, is not upon its face in conflict with the Constitution, nor illegal; the power of regulating the public ways, and maintaining order and safety thereon, being in the municipality. *Municipality Number One* v. *Kirk*, 34.

2. The ordinance of the Municipality Number Two of New Orleans of the 12th of March, 1839, authorizing the treasurer to employ collectors of taxes, did not entitle the treasurer to the commissions allowed for amounts collected. They belonged to the persons employed. *Thomas* v. *Municipality Number Two*, 233.

3. The collectors of taxes cannot claim commissions for sums collected and paid over to the treasurer by the attorneys for the municipality, nor for sums paid directly by tax payers to the treasurer. *Ib.*

4. Where the municipality had agreed with a contractor to make certain banquettes at a fixed price, one-third to be paid by the municipality and the other two-thirds by the front proprietors, and it having been settled by a suit that the front proprietors were liable for only one-third, the municipality will be considered as a warrantor for the remaining third of the price, and held liable for that sum. *Tourniér* v. *Municipality Number One*, 298.

5. The act of 3d of April, 1832, for the opening of streets, authorized the expropriation of property for that purpose under certain circumstances, but in order to do so the power to carry out the guaranties and requisitions of the law must be complete in the corporation seeking to enfore the right. *Municipality Number One* v. *Young*, 362.

6. By the act of 8th of March, 1836, for the division of the city of New Orleans, the centre of Esplanade street was made the boundary between the First and Third Municipalities. The First Municipality has not the right alone to expropriate private property for the opening of Esplanade street. *Ib.*

7. Where, under the act of 3d of April, 1832, for the opening of streets, &c., the owner abandons a lot and claims the assessed value, and the proceedings are afterwards homologated, the property belongs to the corporation, which has a right to take possession of it, and the former owner is a judgment creditor for the value assessed. *Boulat* v. *Municipality Number One*, 363.

8. Where the Mayor of the city of New Orleans drew a warrant upon the Municipality Number Three, for the quota of said municipality, due upon interest coupons owed by the Old Corporation of the Mayor, Aldermen and Inhabitants of the city of New Orleans, and the warrant was protested for non-payment, it was not a novation of the original debt, and the Old Corporation remained liable. *Goldschmidt* v. *Mayor, Aldermen, &c., of New Orleans*, 436.

9. Where a municipality of the city of New Orleans commences proceedings under the act of 1832, for the opening of streets, &c., and the commissioners warn a proprietor of a lot against continuing improvements which he had begun, and he is thereby delayed and damaged by the loss of rents he would have received had he been permitted to finish his buildings, the municipality is responsible to him for the damage sustained, in case the proceedings for opening the street be discontinued. *McLaughlin* v. *Municipality Number Two*, 504.

10. Where the Municipality Number One contracts with a paver, that he shall be paid a portion of the price by the proprietors of the property fronting on the pavement, and those proprietors refuse or neglect to make the payment, the municipality is bound for the amount stipulated to be paid by the contract. *Cronan* v. *Municipality Number One*, 537.

11. The municipalities of the city of New Orleans have the power of enacting ordinances to prevent nuisances, and to provide for the security of public decency. *Municipality Number One* v. *Wilson*, 747.

12. The ordinance of the Municipality Number One of August 6, 1846, to prevent

nuisances, &c., is not identical with the act of the Legislature of March 19, 1818, against persons keeping a disorderly inn, gaming house, &c. *Ib.*

13. The act of 27th May, 1846, providing that each of the municipalities should pay the expense of repairing, taking care of and guarding the prison of the city of New Orleans, is not unconstitutional upon the ground that it impairs the previous contract between the Police Jury and the Municipality Number One. *Haynes* v. *Municipality Number Two*, 760.

14. The parish prison being situated in the First Municipality, became the property of that municipality by the act of March 8, 1836. *Municipality Number One* v. *General Council of New Orleans*, 761.

NEW TRIAL.

See PRACTICE.

NON-SUIT.

See JUDGMENT.

NOTARY.

1. Where a notary has received money and notes deposited with him as the price of a sale by the purchaser, he cannot be compelled to return them unless the vendor be made a party to the suit. *Dean* v. *Clark*, 105.

2. Where an act of mortgage is passed before a notary acting instead of another who was absent, and the copy on which the suit is brought is certified by the latter who had returned, in the absence of evidence to the contrary, it is to be presumed that these officers have properly discharged their official duty in the matter. *Squier* v. *Stockton*, 120.

3. The term of office of a notary appointed before the adoption of the New Constitution is limited to four years after its adoption. *State* v. *Percy*, 282.

4. Under the Constitution and laws of the State, the appointment of a notary is for four years, and the person appointed has the right to hold the office for that term. *Kelly* v. *Gilly*, 534.

5. Where the deputy of a notary has made the demand and served the notice of protest, it does not disqualify him from being a competent witness to the act of protest. *Delamare* v. *Kennedy*, 749.

6. The reason for the law requiring two witnesses to notarial acts was, to create a check upon notaries so as to prevent their ante-dating their acts. *Ib.*

NOVATION.

Novation is not to be presumed. *Lallande* v. *Breaux and Matherne*, 505.

NUISANCE.

Gutters and drains in the city are intended to carry off the water which falls from rains, or percolates through the ground, and they can be used by manufacturers as drains only when that use does not result in a nuisance. *Municipality Number One* v. *Gas Light Company*, 439.

OBLIGATIONS.

1. Where a note is given for future services to be rendered, the non-payment of the note justifies the withholding of those services; and where the services rendered before the maturity of the note were worth the amount of the note, the party rendering them is entitled to recover that sum in an action on the note. *Cooley* v. *Doherty et al.* 163.

2. Under article 2736 C. C. the proprietor has the right to cancel at pleasure the bargain he has made by paying the undertaker for the expense and labor already incurred, and such damages as the nature of the case may require. This authorizes the allowance of the profits the undertaker might have made by completing the work. *Forrest & Crocker* v. *Caldwell & Hickey*, 220.

3. A stipulation between A. and B. for the benefit of third persons, even before their acceptance, cannot be annulled without the consent of A. and B.; and at any time before it is annulled, those third persons may signify their acceptance, and avail themselves of it. C. C. 1884, 1886. C. P. 35. *Bonaffe & Co.* v. *Lane*, 225.

4. Where a stipulation has been made for the benefit of several third persons, it creates on the part of the debtor a joint obligation to them, and no one of them can avail himself of it without making the others parties, so that they may signify their acceptance or refusal. The stipulation is for the benefit of those who do accept. *Ib.*

5. A man who had made a promise of marriage to a woman, would be excused from a performance of his promise, if she was of unchaste character, or if her general reputation was bad, even without proving that such reputation was well founded, where he made the promise in ignorance of her reputation. *Morgan* v. *Yarborough*, 316.

6. Reciprocal promises of marriage constitute a legal contract, and the party violating the contract is liable in damages. C. C. 1928. *Ib.*

7. Where several persons have signed an obligation *in solido*, they are, *inter se*, debtors each one for his share. Upon the payment of the whole debt by one of them, that one is entitled to be subrogated to the rights of the creditor against the others; and so far as the creditor has impaired this right of subrogation he is barred from recovering. *Ledoux & Co.* v. *Rucker et al.* 500.

8. The time for completing commercial contracts is not limited to banking hours. A party has the whole business day to deliver or to pay. *Price & Frost* v. *Tucker*, 514.

9. Where obligations are made payable in Amsterdam in guilders, and the obligor fails to meet those obligations, the holder, who is compelled to exercise his recourse upon the obligor in this State, is entitled to recover the value of guilders in our money. *Albert & Quertier* v. *Citizens' Bank of New Orleans*, 720.

OFFENCES & QUASI-OFFENCES.

See Damages, Ex Delicto.

OPPOSITION OF THIRD PERSONS.

See Practice.

PARAPHERNAL PROPERTY.

See Husband and Wife.

PARENT AND CHILD.

1. Evidence of the acknowledgment of the mother is admissible to establish the filiation of the child; and the declarations of the mother, in relation to the maternity of the child, made at a time not suspicious, are admissible in evidence to prove the filiation of the child. C. C. 214. *O'Blennis* v. *Corri*, 101.

2. Suits of children against parents are not to be encouraged, unless to redress clear and palpable injustice. There are services which parents render to their children, and which it is presumed they perform, until the contrary appears, that money cannot repay. Filial duty should restrain the child from exposing the faults of its parents, or worrying them with litigation, unless compelled by extreme necessity. *Bird, Wife of Lacock*, v. *Black et al.* 189.

3. The father of a natural child acknowledged by him, is liable for alimony for the support of the child at the suit of the mother. C. C. 227. *Gibney* v. *Fitzsimmons*, 250.

4. It is not necessary that the time during which alimony should be paid for the support of a natural child should be stated in the judgment allowing the alimony. The time is fixed by law. C. C. 260. *Ib.*

PARTITION.

1. The proceedings to effect a partition are not evidence against a married woman who was absent, and not a party to those proceedings. *Fuselier* v. *Fuselier*, 132.

2. Partitions between minors to be valid must be made in conformity to the order of court, and in the manner advised by the family meeting. *Succession of Story*, 208.

3. The heir who purchases property at a succession sale, has a right to keep it as a portion of the share coming to that heir; and it is legal in effecting a subsequent partition, to form a lot for that heir in which the indebtedness is included. C. C. 1265. *Ib.*

4. In effecting partitions the law forbids the cantling of tenements, where it can be avoided. C. C. 1287. *Ib.*

5. There is no exception to the rule, that in effecting a partition where there are more than one minor interested, and all represented by the same tutor, a special tutor must be appointed for each minor. C. C. 1291. *Ib.*

6. A judge in ordering a partition, before referring the parties to a notary, should regulate it in the manner which shall appear to him most convenient and most advantageous to the interests of the co-heirs. C. C. 1259. *Ib.*

7. The rule to be deduced, from the conflicting articles of the code for conducting partitions, is, that the lots should be drawn, so far as it is practicable, without depriving any of the heirs of their legal rights, or affecting injuriously the value of the property. *Succession of Story*, 209.

8. In all judicial partitions, the fact that the property cannot be divided in kind, must be made to appear by a report of experts. But a sale made under a consent decree has not the effect of a judicial partition, and does not affect the rights of mortgage creditors. *Le Carpentier* v. *Le Carpentier*, 497.

9. Where lands have been held in common, the action for partition is barred only by thirty years prescription. *Davis et al.* v. *Wilcoxen*, 583.

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PARTNERSHIP.

1. A partnership may be formed, which will be valid between the parties *inter se*, where one of the partners is exempted from losses, provided the exemption be based upon a fair and just equivalent given to the associates by the partner in whose favor the exemption is stipulated. *Consolidated Bank* v. *State of Louisiana*, 44.

2. A dormant partner may retire from a firm, and not be liable for subsequent contracts of his former partners, without giving notice of his withdrawal; provided that the persons affected by his withdrawal were without knowledge of his having been once in the partnership. *Edwards* v. *McFall et al.* 167.

3. Where business is transacted by A. and B., under the firm of A. & Co., B. cannot be considered as a dormant partner; and if he retires from the firm is bound to give notice of his retiring, or he will remain liable for the contracts subsequently made in the name of the firm. *Ib.*

4. A deception practised by one partner upon another has nothing to do with their obligations to third persons who are not privy to it. *Seawell* v. *Payne & Harrison*, 255.

5. A mortgage given by one partner upon the partnership property under a power of attorney, which was ample, is valid. *Ib.*

6. Where one joint owner of a plantation agrees with the other to receive a fixed compensation per annum for his interest in the plantation, such an agreement does not constitute a partnership. It is merely a lease of the joint interest. *McIlvaine & Hayden* v. *Armfield, Executor*, 302.

7. The rule that one partner cannot, without an express authorization, alienate the real property of the firm, does not apply where the partner who has signed the act of alienation, or his heirs, seek to recover it back. *Lee et al.* v. *Ferguson et al.* 532.

8. The receiving, by a partner, of a part or the whole of the proceeds of property alienated without authority by another copartner, is a ratification of the sale. *Ib.*

9. Where a mother and son verbally contract a partnership for planting, and they live together a long time until the death of the mother, it will not be presumed that they kept regular books of account, nor will the son or his heirs be held liable for not having done so. *Theall* v. *Lacy, Tutor.* 548.

10. Where a single individual carries on business in the style of a commercial firm using after his name the words "& Company," and brings suit upon an obligation made payable to himself and company, he must allege and prove that he alone is interested in the business, or he will be nonsuited. *Ferguson, Administratrix* v. *King, Curator*, 642.

11. As a general rule, the right of a partner to bind the firm by new contracts ceases with the dissolution of the partnership; but where a liquidating partner has borrowed money to pay the debts of the firm, the partnership is liable so far as the evidence shows the money was used for the benefit of the firm. *Prudhomme et al.* v. *Henry & Laurans*, 700.

PATENT.

See LANDS.

PAYMENT, AND IMPUTATION OF.

1. In the absence of any proof of an agreement as to the manner of imputation, a payment must be imputed to the debt which the debtor has the greatest interest in discharging at the time. C. C. 2161, 2162. *Dunlop, Moncure & Co.* v. *Tarkington*, 569.

2. Payments are to be imputed to the debts which the debtor had the greatest interest in discharging, and to those which bear interest in preference to those which do not. *Executors of Compton* v. *Compton.* 615.

PEDLARS AND HAWKERS.

See TAX.

PETITORY ACTION,

See PRACTICE.

PLEADING.

See PRACTICE.

POLICE JURY.

1. Where an ordinance of a police jury, imposing a certain tax for the construction of levees, is preceded by a preamble in which the police jury assert the unlimited right of imposing such taxes, has been approved by the Legislature, and the tax declared legal, this action of the Legislature does not prevent the police jury from levying such other taxes as may be deemed necessary for the above purpose. *Gillespie* v. *Police Jury of Concordia*, 403.

2. Where the necessity of a special tax for the construction of levees is alleged to have been produced by the mal-administration of the police jury: This is a question of administration of which the courts cannot take cognizance. *Ib.*

POSSESSORY ACTION.

See PRACTICE.

PRACTICE.

I. *Pleadings.*

1. A prayer for general relief does not authorize the annulment of fraudulent sales, which are not specially attacked in the pleadings. *Andrew Erwin* v. *Bank of Kentucky*, 1.

2. Parties who join in judicial proceedings are held bound by their joint pleadings; and where the power given is joint, as in the case of joint executors, it is indispensable that they should agree in the mode of conducting the litigation, and they can never be permitted to file separate pleas, which place them in a hostile attitude to each other. *Succession of Hilligsberg*, 118.

3. Where the capacity of an administrator is not put specially at issue by the pleadings, he is not bound to prove it. *Heirs of Guillotte* v. *City of Lafayette*, 382.

4. The object of pleading is notice to the opposite party; and when the defendant is apprized by the proceedings and evidence, that the plaintiff relies upon prescription to establish his right to a slave, which he alleges had been feloniously taken from him, the defendant cannot object that the plea of prescription has not been specially pleaded. *Frierson* v. *Irwin*, 531.

5. Amendments to pleadings should be permitted where they cause no injury to the opposite party, and tend to prevent a multiplicity of suits. *Jelks* v. *Smith et al.* 674.

II. *Possessory and Petitory Action.*

6. In a possessory action, it is incumbent on the plaintiff to prove his possession of the premises at the time of the disturbance, and within one year from the day on which his petition was filed. *Besse* v. *Aycock et al.* 134.

7. The plaintiff in a possessory action may recover the value of the hire of the slaves during the pendency of the suit. *Sears, Administratrix,* v. *Wilson et al.* 689.

III. *Of Practice generally.*

8. It is a settled rule of practice, that no answer is necessary to ordinary demands in re-convention. *Andrew Erwin* v. *Bank of Kentucky*, 1.

9. On a re-conventional demand, based on the amendment to art. 375, C. P., the going to trial on the merits of the demand, without urging the objection that no answer had been filed, or judgment by default taken, is a waiver of the objection. *Ib.*

10. If courts are authorized in certain cases to relieve municipal corporations from the bad pleading or ill advised admissions of their counsel, the necessity for such interference must be apparent. *Livaudais et al.* v. *Municipality Number Two*, 8.

11. A party will not be permitted to deny what he has solemnly acknowledged in a judicial proceeding, nor to shift his position at will to a contradictory one in relation to the subject matter of litigation in order to frustrate and defeat the action of the law upon it. *Gridley and Whitehead* v. *Connor*, 4 Ann. 416, and *Freeman* v. *Savage*, 2 Ann. 269—affirmed. *Denton* v. *Erwin*, 18.

12. A bill of exceptions should be presented at the trial, or the point should be then expressly reserved and noted, and after the trial embodied in a bill of exceptions, without unnecessary delay, while the facts are fresh in the memory of both the judge and counsel. A bill of exceptions to a proceeding during a trial which took place the 27th of June, but which was not presented until the 28th of July following, cannot be considered. *State* v. *Romero*, 24.

13. Where after judgment by default, the defendant comes in and moves to set it aside upon filing what he styles a peremptory exception, he will not be allowed afterwards to contend that his exception was merely a dilatory exception, and that the case was not at issue upon the merits. The plaintiff may fix the cause for trial, and the judgment obtained is final upon the merits. *Citizens' Bank* v. *Beard et al.* 41.

14. Where the endorser of a promissory note has possession of it, notwithstanding there may be on it subsequent endorsements, it is *primâ facie* evidence that he is the true and lawful owner thereof; and if the note be secured to him by mortgage he may proceed on it by executory process, without accounting for the manner in which he re-acquired possession of it. *Squier* v. *Stockton*, 120.

15. A party who purchases certain lots of ground from one representing himself as the agent of A., and who executes his notes secured by mortgage upon the property in payment therefor, when sued by A. on the notes and mortgage, is estopped

from setting up the defence that the agent was not authorized to accept the mortgage for A. *Ib.*

16. Where the report and *procès verbal* of a surveyor have been admitted in evidence in the lower court without objection, and the surveyor was sworn and gave evidence in the case, and the parties were present at the survey, it is too late to object to the evidence in the Supreme Court, upon the ground that the surveyor had not been duly appointed and sworn under article 837, C. C. *Tucker, Executor,* v. *Lefebre et al.* 122.

17. Where the proceedings are *in rem*, the property to be seized and sold must be designated by some definitive description; otherwise there can be no seizure effected. *Edwards* v. *Caulk et al.* 123.

18. An order of seizure and sale by executory process, cannot issue upon a mortgage unless there be authentic evidence of the acceptance of the mortgage by the mortgagee. C. C. 1794, 1796, 1803. *Yates* v. *Phipps*, 124.

19. Where in a succession sale the property is described as containing three lots of four arpents front each, and a remaining lot; all of which are sold, and it turns out upon examination that there are but two four arpent lots, the court cannot pass upon the rights of the purchaser of the third lot, and the purchaser of the remainder, without all the purchasers are parties to the suit. *Sigler* v. *Gauthier et al.* 138.

20. The service of citation upon a free white person, above the age of fourteen, living and residing at the domicil of the defendant, she being absent, is not sufficient. The return must show that the service was made *at* the domicil. C. P. 201. *Lancaster* v. *Carriel*, 147.

21. Where the plaintiff resides in a different parish from the one in which he sues the defendant, the latter may, under the act of 1839 amending art. 375 C. P., reconvene against the plaintiff for any cause of action. *Hamilton* v. *Hurst et al.* 150.

22. In an *ex parte* proceeding wherein a judgment by default is sought to be confirmed, a decision of the court in the first instance, rejecting the evidence because the interrogatories were not properly served upon the defendant, will be sustained. *Medley* v. *Wetzlar*, 217.

23. In a suit brought by attachment the defendant cannot reconvene and claim damages for the wrongful issuance of the attachment, unless the plaintiff resided in a different parish from that in which the suit is brought. *Davis* v. *Binion*, 248.

24. Where the petition does not show an interest in the plaintiff which he is prosecuting, the suit will be dismissed. *Seghers, Administrator,* v. *Lemaitre et al.* 263.

25. Vague and general allegations are insufficient to maintain a suit. *Ib.*

26. Where the defendant pleads his domicil in another parish, and the plea is sustained, the plaintiff cannot, after appealing the case, have the appeal dismissed at the defendant's costs, because the defendant has subsequently voluntarily answered to the merits in the case. *Seawell* v. *Key & Johnson*, 271.

27. It is not necessary to traverse the return to a *mandamus* before going to trial on the merits. *Borgstede* v. *Clark*, 291.

28. In an action on a promissory note, evidence will not be received in support of a plea in reconvention not necessarily connected with the original demand, or in support of a plea in compensation where the sum is not alleged to have been liquidated. *Pi* v. *Vidal*, 303.

29. In proceedings *in rem* personal service upon the owner of the thing seized dispenses with the usual publications. *Henning* v. *Steamer St. Helena & Owners*, 349.

30. Where public officers have published, as their own, writings in which interlineations occur, entire confidence is to be placed in such writings, until they are formally attacked supported by a proof of malfeasance. *State* v. *Flor*[illegible]

31. Where a party bonded property which had been provisionally seized for rent, he is responsible on his bond only for the amount claimed in the suit at the time the bond was given, although subsequently the plaintiff filed a supplemental petition claiming a larger amount. *De Egana* v. *Jackson*, 430.

32. Where the defendant, after being arrested for debt, has given bail and absconds from the States before the service of the petition and citation, the plaintiff may proceed with the suit by having a curator *ad hoc* appointed, upon whom service of petition and citation can be made. *Loughery* v. *Crooks*, 486.

33. Where a general rule of practice has been established by the Code of Practice, it applies to cases which may arise under statutes enacted subsequent to that code, unless the statute repeals the rule prescribed. *State* v. *Judge of Second District Court*, 518.

34. Where the opposite party is not taken by surprise, a correction in the pleadings of the date of a note annexed, or in the name of a party, or the errors of an attorney, may be corrected on the trial. *Smith* v. *Nash*, 575.

35. A party cannot get a new trial, upon the ground of newly discovered evidence which would prove a fact not alleged by

him in his pleadings, and of which he must have been aware before the trial. *Long* v. *Robinson et al.* 627.

36. Where the prayer does not ask for the amount claimed to be due in the petition, the court may, under the prayer for general relief, give judgment for the sum really due. *Police Jury of Bossier* v. *Corporation of Shreveport*, 661.

37. Where the records of a court have been destroyed by fire, a rule against the clerk of the court to show cause why the case should not be placed on the docket to be proceeded with, is not the proper remedy. The proceedings should be taken contradictorily with the opposing party to the suit. *Synder* v. *Copes*, 666.

38. Where a person who is a joint obligor removes from the State, he may be sued with his coöbligor by the appointment of a curator *ad hoc* to represent him. *Jelks* v. *Smith et al.* 674.

39. In executory proceedings notice of the seizure must be served upon the debtor. C. P. 654, 735, 745. *Andrews* v. *City Bank of New Orleans*, 737.

40. Where the funds arising from a sale by the sheriff of a steamboat are to be distributed, a party who has not an interest in the fund arising from an attachment, or a privilege, or a judgment, has no right to interfere in the distribution. *Tiner & Connery* v. *Steamer Bride & Owners*, 756.

PRESCRIPTION.

1. A defendant will not be allowed the benefit of the presumption of a dedication of property to public use, from long possession and the perfection of the title by prescription, when such pretensions are inconsistent with the answer filed, and in direct violation of the admissions of that party in the record. *Livaudais et al.* v. *Municipality Number Two*, 8.

2. A judgment rendered in 1825 is not barred by prescription in 1848. *Heirs of Davenport* v. *Labauve & Landry*, 140.

3. The prescription of five years, under C. C. 3505, does not apply to notes not negotiable. *Lancaster* v. *Carriel*, 147.

4. Suit against one endorser does not interrupt prescription with regard to other parties to the note. *Christine* v. *Chaney*, 219.

5. The prescription of one year does not apply to an action of nullity of judgment founded upon the want of citation. C. P. 612, 613. *Ib.*

6. Promissory notes are barred by five years prescription. C. C. 3505. *Courmes* v. *Cavelier*, 276.

7. Where a debt has been due for the lapse of time necessary to bar it by prescription, and there is no evidence justifying the presumption of the relinquishment right acquired to plead prescription, that plea must prevail. *Blossman* v. *Mather*, 335.

8. If a debtor abandons his residence for the purpose of avoiding the pursuit of his creditors, prescription does not run in his favor. *Ib.*

9. The occasional cutting of wood on uncultivated land does not constitute such a possession as can be the basis of the prescription of thirty years. *Gardner* v. *Leger*, 594.

10. The rule which suspends prescriptions during minority, is exclusively for the benefit of minors, and does not prevent them from pleading prescription against persons of age. *Linton* v. *Harman*, 603.

11. The only debts for which the prescription which has commenced to run is suspended by the death of the debtor, are those due to the beneficiary heirs. *Ib.*

12. The actions of attorneys at law for their fees is prescribed by three years. *Ib.*

13. The prescription which bars actions of damages against sheriffs for making wrongful seizure is two years. *Brice* v. *Jones*, 635.

14. The prescription of one year provided for by art. 3499, C. C., applies only to the wages of workmen, laborers and servants who are employed by the day or by the month, and not to claims for the value of the work done by the job, and for materials furnished for the work. *Gallaspy* v. *Livingston, Administrator*, 671.

PRIVILEGE.

1. No sheriff or United States marshal has the right, on an execution in favor of a third person, of taking away property on which the landlord has a privilege for rent, and selling the same, pending an injunction taken out by the landlord, without paying the rent for which the privilege exists. *Robb* v. *Wagner*, 111.

2. Where property on which a landlord has a privilege for rent, has been seized on execution, at the suit of a third person, the landlord has two remedies, either by way of third opposition, or by injunction. *Ib.*

3. When the United States marshal has seized property, upon which a landlord has a privilege for rent, in a suit by a third person, and the United States Court has no jurisdiction of a third opposition of the case, on account of the citizenship of the parties, the landlord may proceed against the marshal in the State courts. *Ib.*

4. Where a party claims a privilege for materials furnished which exceeds five hundred dollars in amount, to maintain his

privilege he must show that his claim was duly recorded. C. C. 3239. *State* v. *Mexican Gulf Railroad Company*, 333.

5. The vendor's privilege is lost by the property passing out of the possession of the vendee. C. C. 3194. *Lee and Ritchie* v. *Galbraith et al.* 343.

6. A privilege follows the object to which it is attached, and the creditor may lay hold of that object by the proper writ of seizure, in whatever part of the State it may be found, whether at the owner's domicil or not. *Henning* v. *Steamer St. Helena and Owners*, 349.

7. Where the defendant purchased a plantation at sheriff's sale, and suffered the original owner to remain on it and cultivate it for his own benefit, from motives of friendship, he will not be liable for a lot of mules purchased by the tenant to cultivate the plantation, the latter having made the purchase not as agent but on his own credit. *Rankin* v. *Stewart*, 357.

8. Under the prayer for general relief a judgment may be rendered allowing a privilege upon property which was claimed by the plaintiff as owner, if evidence to establish the privilege has been introduced without objection. *Richardson* v. *Weiner & Co. et al.* 646.

9. A party has no privilege upon a steamboat for the premium of insurance, where the policy shows the premium has been paid. *Tiner and Connery* v. *Steamer Bride and Owners*, 756.

PROCURATION.

See MANDATE.

PROMISSORY NOTES.

See BILLS OF EXCHANGE.

PUBLIC THINGS.

1. Places of public worship as well as places of public amusement are, in this State, invariably private property; and no dedication to the public can be predicated upon the designation of such places in the plans of division of towns. *Livaudais* v. *Municipality Number Two*, 16 L. R. 509, affirmed. *Livaudais et al.* v. *Municipality Number Two*, 8.

2. Our laws secure to the public the use of the banks of navigable rivers; and within the limits of incorporated towns, the municipal governments are authorized to regulate that use, and to cause obstructions to be removed; but they have no right to convert the batture formed in front of the property of individuals to private purposes, such as wood yards, saw mills, and the like. *Carrollton Railroad Company* v. *Winthrop et al.* 36.

PUBLIC WAYS.

See LEVEES, ROADS, &c.

RECONVENTION.

See PRACTICE, PLEADING.

RECORDER AND REGISTER OF MORTGAGES & CONVEYANCES.

1. The articles 3352, 3353, 3354, requiring separate books to be kept by the recorder of mortgages, are directory only. *Robertson, Trustee*, v. *Brown*, 154.

2. Where there are no other books kept by the recorders of mortgages in the country than a registry of conveyances, in which all mortgages are recorded, this recordation is sufficient. But if there be a separate registry of mortgages, all mortgages must be recorded in that book. *Ib.*

3. The object of registration is public notice, with reasonable certainty of the substantial particulars of the mortgage; and when this is done the purposes of the law are satisfied. It is not required that the judgment or mortgage should be recorded at full length in the mortgage office. *Bonaffe & Co.* v. *Lane*, 225.

4. The registry laws do not require the recording of titles by descent. *Heirs of Guillotte* v. *City of Lafayette*, 382.

5. Judicial proceedings carry with them notice, and an assignment made in court to the syndic has the same effect as if recorded in the parish where the land is situated; there being no law requiring such assignments to be recorded. *Heirs of Bastable* v. *Curry*, 411.

6. A title derived from a judgment of court is not required to be registered under the act of 20th March, 1827, creating the office of register of conveyances for New Orleans. *Pedesclaux* v. *Diennis*, 507.

7. A claim to land founded upon a judicial sale duly recorded, will defeat a claim founded upon a prior judicial sale which was not recorded. *Cotton* v. *Stacker*, 677.

REDHIBITION.

See SALE.

REMISSION OF DEBT.

The acceptance of a release of a debt is by law presumed. *Lee et al.* v. *Ferguson et al.* 532.

ROADS.

See Levees and Roads.

SALE.

1. *Form and Validity of the Contract.*

1. An agreement with A. that he might have a fourth interest in a stranded vessel which B. had purchased, and which had to be gotten off, did not vest in A. an interest which he could transfer to a third person without the consent of B. It was an agreement to take in A. as a partner, and gave no right to impose an unknown partner on B. *Peter B. Taylor* v. *Henry Penny*, 7.

2. A contract of sale in which there is a stipulation, that the vendor may redeem the property by returning the price within a certain time, where the vendor remains in possession of the property and the price is inadequate, will be regarded not as a sale with the equity of redemption, but merely as a security for the return of the money paid to the vendee, unless sufficient evidence to the contrary be produced. *Collins* v. *Pellerin*, 99.

3. The want of delivery of the thing sold by the vendor is a badge of simulation, and deprives a contract of the essential characteristics of redeemable sales. *Ib.*

4. Where the parties to a sale of land have agreed in writing upon the price and terms of sale and the description of the land sold, it will be regarded not as an agreement to sell, but as a sale, although there may be a stipulation that the vendor is to make a formal title. If the vendee desires a formal title he must demand it, and until he does so, cannot object to the payment of the price upon the ground that the vendor has not tendered him a formal title. C. C. 2431, 2437. *Stephens* v. *Chamberlin*, 656.

II. *Causes of Nullity and Rescission of the Contract.*

5. Sales of property made without any intention of the parties to bind themselves, are not contracts. There is a distinction between the contract, and the instrument of writing which may purport to witness it. C. C. 1755. *Andrew Erwin* v. *Bank of Kentucky*, 1.

6. The chapter of the Civil Code, regulating the revocatory action, is not applicable to cases of simulation. In those cases creditors may seize notwithstanding the apparent transfer, and if enjoined may plead and show the simulation on the trial of the injunction. *Ib.*

7. Where the thing sold remains in the possession of the seller, there is reason to presume the sale is simulated; and the parties must adduce proof of the reality of the sale. C. C. 2456. *Ib.*

III. *Warranty.*

8. The purchaser who is apprised of the danger of eviction before the sale, cannot suspend the payment of the price on account of that danger. He has no action until he is evicted. C. C. 2535. *Bonnecaze* v. *Grannery*, 166.

9. Where a party has been evicted from the land purchased, he is not bound to pay a note given for the price. But if the eviction be only of a portion of the land, he may be bound ratably for the land of which he was not evicted. *Courmes* v. *Cavelier*, 276.

10. The knowledge which purchasers may have of the danger of eviction does not deprive them of claiming the return of the price after the eviction does take place. *Scott & Dunbar* v. *Featherston & Amis*, 306.

11. A purchaser who knew, at the time of the purchase, of the existence of outstanding conflicting claims, cannot refuse payment of the price on account of those claims. C. C. 2535. *Dwight* v. *Richard*, 365.

12. The possessor in good faith, who is evicted by judgment of a court, is entitled to the increased value given to the property by improvements which he has made. *Elbridge* v. *Tibbitts*, 380.

13. Where the property has been sold under an execution against the purchaser so that he can no longer return it, he cannot demand a rescission of the sale upon the ground of eviction from the greater portion of the property; his only remedy is for a reduction of the price. *Clark, Administrator*, v. *Succession of Briggs*, 624.

14. A claim for the diminution of the price cannot give rise to the action of warranty, for in such a case it is the vendor who is evicted of a portion of the price. *Ib.*

15. Even where there is a stipulation of no warranty, the vendor is bound to restore the price, unless the purchaser was aware at the time of the danger of eviction, and took the property at his peril or risk. C. C. 2481. *Bowles* v. *Alfred*, 667.

16. Even where there is an exclusion of warranty in a deed of sale of land, the seller is responsible in case of the eviction of the purchaser, unless he was aware at the time of the purchase of the danger of eviction, and took the property at his risk and peril. C. C. 2481. *Sewall* v. *Roach*, 683

17. Where a suit for eviction is still pending against the purchaser in possession of land, the seller may recover the price upon giving security to indemnify the purchaser. *Ib.*

18. The purchaser cannot refuse to pay the price upon the ground of an apprehended eviction, when a bond of indemnity is tendered him in conformity with C. C. 2535. *Squire* v. *Stockton*, 741.

IV. *Redhibition and Action Quanti Minoris.*

19. Where the seller states in an act for the sale of a slave, that she is and has been, so far as know to him, in good health, and also her parents before her, and the purchaser agrees to run the risk of her health, and the slave dies of consumption, the seller is not bound to return the price, unless he knew at the time of the sale of the existence of the disease. *White* v. *Slatter*, 29.

20. At the time the plaintiff purchased a slave he understood the state of the slave's health, he cannot, therefore, recover the price of the slave in a redhibitory action. *Jourdain* v. *Virgil*, 40.

21. Where the seller of a slave made known to the buyer that the slave was an habitual runaway, before the sale, the buyer cannot maintain a redhibitory action for that vice, notwithstanding the act of sale contained the usual warranty against vices and defects. C. C. 2488. *Campbell* v. *Botts*, 106.

22. Even where the act of sale of a slave contains a general warranty, parol evidence is admissible to prove that the seller made known to the buyer certain vices before the sale. *Ib.*

23. Where a redhibitory vice appears in a slave within three days after a sale, the presumption that it existed before does not apply to vices of character, such as being a runaway. *Dugas* v. *Estiletts, Administrator*, 559.

24. The legal presumption, that where a vice has made its appearance in a slave within a certain time, it existed before, may be rebutted by testimony. The only legal presumptions which cannot thus be rebutted, are those which annul certain acts or refuse a judicial action. *Ib.*

25. The speculative opinions of physicians derived from a *post mortem* examination are not, by themselves, full proof of the length of time during which a redhibitory disease existed in a slave before his death. *Dupre et al.* v. *Desmaret*, 591.

26. In a redhibitory action for the price of a slave, the party cannot recover unless a physician be called in within a reasonable time, although the slave may have been afflicted with a redhibitory disease. *Dupré et al.* v. *Prescott*, 592.

27. The speculative opinions of a physician founded upon a *post mortem* examination, as to the time of the inception of a redhibitory disease, should not be received as full proof of the fact. *Roca* v. *Slawson*, 708.

28. To entitle a party to recover the price of a slave who has died of a redhibitory disease, the slave must have received suitable attention after the disease made its appearance, and medical attendance, if possible, must have been seasonably procured. *Ib.*

29. Where a redhibitory disease manifests itself within fifteen days after the sale of a slave, it will be presumed to have existed at the time of the sale, unless the defendant shows that the slave had been in the State more than eight months previous to the sale. *Kock and McCall* v. *Stephens*, 739.

30. Where a slave, who has been sold, was afflicted with one disease and subsequently died of another, which did not exist at the time of the sale, the warranty against redhibitory vices cannot be so extended as to embrace the second disease upon the ground that the first predisposed the slave to an attack of the second. *Allen* v. *Campbell*, 754.

V. *Judicial and Forced Sales.*

31. A sale under execution of all the surplus funds in the hands of a certain person after the payment of a prior attachment, has no validity for want of a sufficient description, and a monition to confirm such a sale will be dismissed. *Marini* v. *Mourain*, 133.

32. Where the sheriff advertises a sale of property between the hours of 10 A. M. and 4 P. M. it is not good cause for an injunction, under the act of 5th March, 1842, fixing the time of making sheriff's sales, and requiring them to commence their sales at 11 o'clock; especially when there is no allegation that the sheriff intended commencing the sale at a different hour from the one prescribed by the law. *Dorsey* v. *Vaughan et al.* 155.

33. A purchaser of property at sheriff's sale under a valid judgment will acquire a good title, although in a subsequent litigation between the same parties for the same cause of action, the plaintiff obtains a second judgment for a less amount than the first. *Bemiss et al.* v. *Dwight and Hartman*, 170.

34. Where property was sold on twelve month's bond by the sheriff, for less than

the amount of a prior mortgage, it was no sale; and the surety on the twelve months' bond is not bound *Langfitt and Perry* v. *Brown, Administrator*, 231.

35. Where forty-three slaves are sold by the sheriff under no other description than as the increase of female slaves in the mortgage, the description is insufficient. *Seawell* v. *Payne and Harrison*, 255.

36. A party who was aware of the description given by the sheriff in the advertisement of a judicial sale, who treated with the plaintiffs for the purchase of the property, and who from the facts can be presumed to have assented to the sale, is estopped from contesting its validity on account of the insufficiency of the description. *Ib.*

37. Courts of justice should not overturn judicial sales at the suit of third persons, without securing the rights of those who were parties and who hold to them, by adequate security furnished by the party seeking to set aside such sale. *Ib.*

38. The purchaser at a sheriff's sale under a mortgage is not concluded by a lease which existed on the property, because it was mentioned in the certificate of the recorder of mortgage when the sale was not made subject to the lease, and the certificate was given without authority. *Seghers, Administrator*, v. *Lemaitre et al.* 263.

39. The 30th section of the insolvent law of 1808 requires that the syndic must present a petition for an order of sale before selling the insolvent's property; but where the sale has been made, the non-exhibition of an order of sale does not invalidate the purchaser's title. *Heirs of Bastable* v. *Curry*. 411.

40. Where a person having a mere equitable claim to lands permits another to sue the United States for them, and recover judgment, and the lands are sold under an execution against the person having thus acquired a judgment, the original claimant is estopped from recovering the lands from the *bonâ fide* purchaser at the sale. *Ib.*

41. The statute of 6th of April, 1843, directing the mode of publishing advertisements of sheriff's sales, is sufficiently complied with by posting one advertisement at the court-house door, and two other notices in two public places in the same village. *Vincent* v. *Sandford*, 560.

42. Where the plaintiff in execution appoints an appraiser of the property to be sold under it, this amounts to a waiver on his part of any error in the advertisement. *Lewis* v. *Gordy et al.* 570.

43. The rule that the formalities in forced alienations are to be strictly observed, is intended rather for the benefit of the defendant and purchaser. *Ib.*

44. Where a sheriff has made a seizure on two executions, and there was a prior judicial mortgage to which he applied a portion of the proceeds, the property seized not having sold for enough to satisfy the writs, the only interest the judgment debtor has is to see that the proceeds of the sale be applied to the executions. He cannot sue for the money. *Sittig* v. *Morgan*, 574.

45. Where a party to a sale of land is bound to furnish a right of way, he cannot enforce the payment of the price until he has complied with that obligation. *Rucker et al.* v. *Liddell*, 577.

46. A judgment, execution, and sheriff's return showing a sale and sheriff's deed, are evidence of a forced alienation of property, and impose on those who attack them the necessity of showing that the forms of law have not been complied with. *Davis et al.* v. *Wilcoxen*, 583.

47. Where the probate judge in making a sale of succession property, got one of his clerks to act as crier at the sale, and afterwards made the adjudication and passed the acts of sale in his own name, it does not amount to such an informality as to annul the sale; especially as the administrator had received the proceeds, partitioned them amongst the heirs and had his account homologated five years previous to the institution of the suit. *Anty* v. *Anty*, 622.

48. Where the defendant has acquiesced in a sale of his property for more than thirty years, it is not for others who do not set up his title, but repudiate it, to complain of the want of the legal formalities in the sheriff's sale. *Morrisson* v. *Whetstone*, 636.

49. Although a deputy sheriff cannot buy property at a sale made by himself, there is no law which prohibits him from buying at a sale made by the sheriff. *Hewitt* v. *Stephens*, 640.

50. It is sufficient if a party claiming under a sheriff's sale shows a substantial compliance with the requisites of the law in making the sale; and what is necessarily or reasonably to be inferred from the sheriff's return may be presumed until the contrary is shown. *Ib.*

51. Where the defendant in execution points out property to be seized on execution, a notice of seizure is unnecessary, and the three days notice before advertising is waived. *Ib.*

52. If a sheriff's return shows that property was sold, "after having the same appraised," it will be presumed there was a legal appraisement, unless the contrary be proved. *Ib.*

53. The act of 8th of March, 1841, directing sheriffs to advertise their sales in a newspaper, if any were published in the parish, superseded the acts requiring the

advertisements to be posted at two other public places in the parish, besides at the court-house. *Ib.*

54. The act of 10th of March, 1834, declares that the fact of the sale being made, is *primâ facie* evidence that the sheriff made the required advertisements. *Ib.*

55. Where a person buys a promissory note sold under execution, he acquires no greater rights than the judgment debtor possessed, and is subjected to every equitable defence which the drawer of the note had against the judgment debtor. *Mims* v. *Morrisson*, 650.

56. A claim to land founded upon a judicial sale duly recorded, will defeat a claim founded upon a prior judicial sale which was not recorded. *Cotton* v. *Stacker*, 677.

VI. *Sales at Auction.*

57. Where real property and slaves are adjudicated to a purchaser at a public sale, and the titles made in the name of that purchaser, parol evidence is not admissible to show simulation in the title, or an agency to make the purchase for the benefit of other co-heirs of the purchaser. *Fuselier* v. *Fuselier*, 132.

VII. *Of Sales generally.*

58. In a sale of corn for 68 cents per bushel, when prime corn was selling at 75 cents per bushel, the purchaser is not presumed to have inferred from the price paid that the corn was damaged. He paid a sound price for an article of secondary quality; but was entitled to a sound article. *Hosmer* v. *Baer & Fox*, 35.

59. As a general rule, no man can be divested of his property without his consent, and even an honest purchaser, under a defective title, cannot hold against the true proprietor. *Moore* v. *Lambeth et al.* 66.

60. Where the owner stands by and permits his property to be sold as the property of another, without objection, or where he has fraudulently conveyed his property to one, who has sold it to a *bonâ fide* purchaser, or where he has entrusted it to a general agent, as a factor or consignee in the habit of selling such property, he is estopped from claiming the property in the hands of an innocent purchaser. *Ib.*

61. The plaintiff had entrusted her negroes to an agent to bring from North Carolina to Louisiana to carry on the business of planting in Louisiana, and the agent mortgaged the negroes to pay his own debts. *Held* by the court, that the purchaser at the sale under the mortgage, although an innocent purchaser, acquired no title to the plaintiff's property. *Ib.*

62. The circumstance that the person making a purchase which is attacked as being simulated and fraudulent, had been the attorney at law of the vendor, does not warrant the court in setting aside the verdict of a jury sustaining the validity of the sale. *White & Co.* v. *Slaughter et al.* 136.

63. Where the vendee claims property under an act of private sale, which was not recorded until after a seizure by a creditor of the vendor, and the possession at the time of the trial is shown to have been in a third person, between whom and the vendee no privity or connection is shown, it will not be regarded as the possession of the vendee under the act of sale. *Wade* v. *Marshall & James*, 157.

64. The receipts of receivers of public moneys for the price of public lands, are sufficient basis for a petitory action, and vest such a title in the owner to subject the lands to the mortgage resulting from the recordation of a judgment against him. *Robertson, Trustee,* v. *Wood et al.* 197.

65. If the vendee buys up a better title than that of the vendor, and the vendor was guilty of no fraud, he can only be compelled to refund to the vendee the amount of money he paid for the better title. Equity treats the purchaser as a trustee for the vendor, and acts done to perfect the title by the vendee in possession inure to the benefit of the vendor. *Pepper et al.* v. *Dunlap*, 200.

66. No other evidence is admissible to establish the simulation of a sale of immovables or slaves between the parties to the act of sale than a counter letter, or evidence in writing, equivalent to a counter letter. *Ranaldson* v. *Hamilton*, 203.

67. Where a curator sues to set aside sales made by judicial authority, upon the ground of collusion and fraud in the sales, he ought to allege that the creditors have been injured by the sales; and if there be but one heir, and that one an universal legatee, who was also executor, who must have been a party to the collusion and fraud, and the estate not alleged to be insolvent, these circumstances will have great weight with the court in maintaining the validity of the sales. *Lowry* v. *Erwin*, 205.

68. Where the defendant purchased a plantation at sheriff's sale, and suffered the original owner to remain on it and cultivate it for his own benefit, from motive of friendship, he will not be liable for a lot of mules purchased by the tenant to cultivate the plantation, the latter having made the purchase not as agent but on his own credit. *Rankin* v. *Stewart*, 357.

69. If a man stands by and is silent while his own property is being sold, and suffers another to become the purchaser, he is estopped from disputing the title thus acquired; and his heirs and those claiming under him are likewise estopped. *Blanchard et al.* v. *Allain et al.* 367.

70. An instrument which purports to be a sale, but in which there is no price stated, will not be regarded as a sale, but as a donation. *Hagerty* v. *Corri*, 433.

71. Where the defect in an article sold is apparent upon inspection, it affords no ground for an action in warranty. C. C. 2497. *Szymanski* v. *Urquhart*, 491.

72. The principle that no one ought to enrich himself at the expense of another, is not applicable to a case of the purchase of a defective article where the parties acted in good faith, the price was not half the value of a good article, and there was no warranty. *Ib*

73. Where the vendee sues to annul a sale, on account of fraud, and to recover back the price, when sued by the vendor upon one of the notes given in payment of the price, he may set up in his defence the pendency of the first suit, which bars the second. *Kline* v. *Freret*, 494.

74. A judgment creditor may disregard a simulated sale, and seize on execution the property covered by the simulation. *Hughes* v. *Winfree, Sheriff*, 668.

75. Where a party is bound to execute titles to land upon the payment of the price, he is entitled to a judgment for the price without previously tendering a title. *Waterman* v. *Gibson*, 672.

76. A contract purporting to sell a slave, in which the vendor has the privilege of redeeming the slave upon paying a certain sum and interest, the vendee agreeing to pay a certain stipulated hire for the slave during the time, but if the slave is not redeemed, the vendee is to become the absolute owner upon paying an additional sum. will be regarded as a security for money lent, and not as a sale. Until the vendee has paid the additional sum, he does not become the owner of the slave and the vendor may redeem, and may deduct the hire of the negro from the amount loaned. *Matthews* v. *Wilson*, 691.

77. A plaintiff may seize on execution property which his debtor has transferred by a simulated sale. *Maxwell* v. *Mallard & Armistead et al.* 702.

SEQUESTRATION.

1. A sequestration in a suit by vendee to recover slaves alleged to have been sold to him, will be set aside upon motion, where it appears from the face of the petition that the vendee has never paid the price, or put the vendor in default, and when the delivery had never been made to the vendee. *Farr* v. *Davis*, 28.

2. Where property seized on sequestration has been lost by the negligence of the sheriff, the plaintiff is liable if the sequestration was illegally issued; and it is not necessary to make the sheriff a party, when the defendant seeks to recover his damages of the plaintiff. *Hamilton* v. *Hurst et al.* 150.

3. An affidavit for the sequestration of a crop and certain slaves, stating that the plaintiff has reason to believe and fear that the defendant will sell or dispose of said crop, or cause to be removed said slaves from the State, during the pendency of the suit," is defective, because the plaintiff does not swear to the ownership of the property, and also for uncertainty. *Ranaldson* v. *Hamilton*, 203.

4. To entitle a party to recover damages for the wrongful sequestration of a vessel, he must prove that he suffered damage from the consequent detention of the vessel to entitle him to recover on that account. *Penny* v. *Taylor*, 713.

5. The fees paid counsel for defending a sequestration wrongfully issued should be reimbursed, and will be allowed in a suit for damages for the issuance of the sequestration. *Ib.*

SHERIFF.

1. Where the sheriff without any legal order of commitment imprisons a slave, and the death of the slave ensues in consequence of the imprisonment, the sheriff is liable for the value of the slave. But where the death is not attributable to the imprisonment the sheriff is not liable for the slave. He may, however, be held accountable for the value of the slave's services during the detention. *McCarthy* v. *Lewis, Sheriff*, 115.

2. To make the public the victim, because the sheriff had omitted to be sworn according to the Constitution, by declaring his acts null, would be repugnant to justice and the well settled doctrine of the law. *Dorsey* v. *Vaughan et al.* 155.

3. The right of a sheriff *de facto* to perform the duties of his office, cannot be litigated collaterally in a suit between two other persons. *Dorsey* v. *Vaughan, ante* p. 155, affirmed. *Beard et al.* v. *Gresham et al.* 160.

4. Where property is seized by the sheriff under one writ, if the sheriff receive a second writ, the first levy is sufficient for

both, and the receipt of the second is a constructive levy. If the party suing out the second writ be sued for damages for a wrongful seizure, only such damages can be recovered as were sustained from the detention of the property under the second writ, after it was released from the first seizure. *Patterson* v. *Spaulding et al.* 171.

5. Where the sheriff makes a seizure of a house, under an order of seizure and sale or *fieri facias*, he may lease the premises, and collect the rent. C. P. 658. *Courtney* v. *Hunt*, 174.

6. The sheriff who has made a seizure may proceed to sell, after the return day of the writ has expired, where the failure to sell has not been attributable to the plaintiff. *Dorsey* v. *Carrollton Bank*, 237.

7. A sheriff is not responsible for damages which are the remote consequence of his making a wrongful seizure. *Brice* v. *Jones*, 635.

8. A sheriff has no right to seize and take into his possession the records in the custody of the clerk of the court. *Hanna* v. *Bry et al.* 651.

9 Where the sheriff's return does not mention that service of citation was made in the parish of which he is sheriff, it will be presumed that the service was made in that parish, unless the contrary be proved. It will also be presumed that he knew the person on whom he returns that he made service. *Whiting & Wife* v. *Hagerty et al.* 686.

See also Sale, Judicial and Forced.

Also, Execution of Judgments.

SERVITUDE.

1. Where, under art. 656 C. C., in a matter of natural servitude it is not possible to do justice to both parties, recourse should be had to the police jury which under the act of 1813 has ample power. *May* v. *Ransom*, 424.

2. Where a party sells land to another, a right of way being reserved to the vendee, the vendor, within a reasonable time, is bound to point out the place where the right of way is to be exercised. C. C. 1907, 2450, 2451. *Rucker et al.* v. *Liddell*, 577.

3. Where a party owning an entire tract of land cuts certain canals for draining the land, and afterwards sells the entire tract, upon re-acquiring a portion of it, his vendee cannot, by erecting levees, &c., interfere with the drains previously established. They are servitudes which cannot be interfered with. *Roy et al.* v. *Roy et al.* 590.

SHIPS AND SHIPPING.

See Common Carrier.

SLAVES.

1. The only issue which a slave who sues for his freedom can make, is that of "*Liber vel non.*" He has no right to contest the title by which the defendant asserts dominion over him. *Dolliole* v. *White*, 98.

2. No one can emancipate a slave before he is thirty years of age. C. C. 185. Act 8th of March, 1807. Act 31st of January, 1827. *Ib.*

3. Whether a party be justified by the 32d article of the Black Code in the use of firearms to prevent the escape of a slave arrested by him at an unseasonable hour, is a question with the decision of which juries may safely be trusted. *Arnaud* v. *Lawes*, 127.

4. A. being domiciliated in the State of Mississippi took one of his slaves to Ohio, and after having there emancipated her, returned with her to his domicil in the State of Mississippi. *Held:* That the status of the slave must be determined by the laws of Mississippi, under which the emancipation was invalid. *Mary, f. w. c.* v. *Brown*, 264.

5. Since the act of the 30th of May, 1846, a slave carried by her master to a free State upon returning to Louisiana cannot claim her freedom on account of having been carried to such free State. *Conant, Tutor*, v. *Guesnard & Wife*, 696.

6. An action will lie by a free person against one who claimed that person as a slave, for damages incurred during the pendency of the suit for freedom; and an admission that the defendant had acted in good faith, is no defence against an action for damages incurred subsequent to the institution of the suit for freedom. *Arbuckle* v. *Bouny*, 699.

See also Sale, Redhibition.

STATUTES.

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II. *Construction of.*

1. The law does not favor repeals by implication. When laws in *pari-materia* are to be interpreted, that construction is to be preferred which will give effect to all their provisions. C. C. 17. *Succession of Hebert*, 121.

2. A statute must be construed with reference to its object, and if this be inconsistent with the precise words of the statute, the latter must yield to the controlling influence of the will of the Legislature result from the whole. *Commercial Bank* v. *Foster*, 516.

SUCCESSIONS.

I. *Appointment of Administrators, Curators and Executors.*

1. An executor who is also an attorney at law will not be allowed to charge for his services as attorney, nor can he obviate this by charging the fees as due to other lawyers who never in fact attended to the business. *Succession of Key*, 567.

II. *The Administration of Successions.*

2. Where an executor has been dismissed from office and condemned to pay twenty per cent damages, under the act of 13th of March, 1837, upon certain funds which he had not deposited in bank; and an executor subsequently appointed has, in a proceeding against him to account for his administration, recovered a judgment for a smaller amount than he had been condemned to pay the twenty per cent upon, the per cent is to be calculated on the amount found to be due by him in the last suit. *Fink Executor.* v. *Martin et al.* 103.

3. Parties who join in judicial proceedings are held bound by their joint pleadings; and where the power given is joint, as in the case of joint executors, it is indispensable that they should agree in the mode of conducting the litigation, and they can never be permitted to file separate pleas, which place them in a hostile attitude to each other. *Succession of Hilligsberg*, 118.

4. The defence by the surety on an administrator's bond, that at the time of the filing of the petition against him, execution against the principal had not been returned, should have been pleaded as an exception *in limine litis*, and could not be gone into after an answer on the merits; the execution having been returned, no property found, before the answer was filed. *Ross, Tutor*, v. *Chambliss*, 158.

5. A widow may be appointed administratrix of her deceased husband. *Sears, Administrator*, v. *Wilson et al.* 689.

6. An administratrix may maintain a possessory action for property which had been in the possession of the deceased. *Ib.*

III. *Of Successions generally.*

7. One joint administrator is not liable to the succession of the other for acts of maladministration committed by the latter. *Succession of Jordy*, 37.

8. *Walker et al.* v. *Duverger et al.* 4th Ann. 569, affirmed. *Ib.*

9. Where property was left by will to the surviving wife and minor children during her natural life, "unless she should change her situation," one of the children, so long as the will was not set aside, has no claim on the fruits of the property, before the marriage of the mother. *Ib.*

10. Where a creditor of a succession who had received no dividend on the tableau and made no opposition, had taken a rule upon the administrator to compel the sale of the property of the estate to pay the debts, such creditor will be considered as one who had made herself known at the time the tableau of distribution was filed, and cannot maintain an action under C. C. articles 1060, 1061, and 1176, to compel a creditor who had received a dividend to refund the portion which should have been allowed to the plaintiff on the tableau. *Durand* v. *De la Pacquerie*, 38.

11. The concluding part of art. 1176, C. C., does not change the rule established by that and the other articles of the code upon the same subject. *Ib.*

12. A dividend on a tableau may be opened if creditors have not been paid and there has been no negligence. But where the omission to prove the debt proceeds from the creditors' own *laches* the court will not disturb a distribution. *Ib.*

13. The impression has generally been that the maxim of the French law *Le mort saisit le vif*, is a rule of our jurisprudence, and that the seizin of executors or administrators was a fiction of law which did not prevent that of the heir. C. C. 435, 936, 940. *Frasier and Adams, Receivers*, v. *Hills*, 113.

14. Even where the heir originally accepted the succession with benefit of inventory, if she afterwards assumed the quality of heir in an unqualified manner, she will be considered as seized as heir *ab initio*, and entitled to the advantages and disadvantages, incident upon it. C. C. 981, 982, 988. *Ib.*

15. Legatees under an universal title are bound for the debts and charges of the succession. C. C. 1604, 1606. *Succession of Langley*, 199.

16. Legatees under a particular title are not liable for the debts and charges against a succession, unless made so expressly by the will. C. C. 1379, 1380, 1393. *Ib.*

17. Where a mother claims as forced heir of a deceased child, it is not necessary to prove that the deceased left neither descendants nor collaterals, these being negative propositions; but she must show that the father is dead, or that one hundred years has elapsed from the date of his birth, to entitle her to recover one-half of the estate. *Marcus, f. w. c.* v. *Barcas, f. m. c.* 265.

18. A legatee who takes possession of his legacy without any authority for so doing, is bound to restore the fruits he has received. C. C. 1622. *Ib.*

19. By the act of 26th of March, 1842, an executor is bound to pay over to the Treasurer of the State the amount of the tax imposed on foreign heirs, legatees, &c., and will not be discharged from so doing by showing that he has appropriated the money to other purposes. Execution may issue against him on a judgment upon a rule taken against him in behalf of the State Treasurer. *Succession of Pehan*, 304.

20. Where the succession is insolvent the administrator represents the creditors, and may attack conveyances of the property made by the deceased before his death, upon the ground of simulation, although the deceased could not himself have disputed the reality of those conveyances. *Judson, Administrator*, v. *Connolly & Husband*, 400.

21. It is not necessary that the insolvency of a succession should be proved by a tableau of the debts exhibited in court and homologated. The insolvency may be proved by judgments against the deceased. *Ib.*

22. On an opposition to an account filed by two executors, the universal legatee cannot litigate the legality of the title of one of the executors to property which he had received from the testator before his decease, upon the ground that it was a *fidei commissum*, or an invalid donation These are matters *in pays* which the executor has a right to have tried by a jury. *Succession of McCarthy*, 434.

23. Executors cannot claim their commissions on property of which they never had the seizin, and which was not included in the inventory. *Ib.*

24. Where a testator directs that the interest of his co-partner in a plantation shall be purchased, and reserves a fund for that purpose, upon the refusal of the co-partner to sell, the executors are bound to distribute the funds which had been reserved to effect the purchase. *Heirs of Henderson* v. *Rost et al.* 441.

25. Where an administrator has been dismissed, under the act of 13th of March, 1837, he cannot take a suspensive appeal from the order of dismissal, although he may from such part of the judgment as condemns him in pecuniary damages. C. P. 1059. *State* v. *Judge Second District Court*, 518.

26. The heir who owes a debt to a succession is entitled to collate it, and cannot be sued for the debt without proof of the insolvency or indebtedness of the succession

and the necessity of his paying. C. C. 1214, 1271, 1272, 1265. *Davis et al.* v. *Davis et al.* 561.

27. The forfeiture of the right to act as administrator, contemplated by the act of 13th of March, 1837, does not take place *ipso facto* by the omission to file an account. It is a matter to be acted upon in the matter of the succession, and cannot be inquired into collaterally in a suit brought by the administrator against a debtor of the succession. *McCleland, Administrator*, v. *Bideman*, 563.

28. The heirs cannot release a debt due to the succession so long as there are debts due by it and the estate is in a course of administration in the hands of an administrator. *Clark, Administrator*, v. *Succession of Briggs*, 624.

29. Where one who is executor and also universal legatee under a will, takes possession of the estate as executor, he will not be regarded as having possession in his capacity of legatee, nor can he, without judicial authorization, change the nature of his possession. *Bird* v. *Succession of Jones*, 643.

30. The action for *separation of patrimony* supposes the case of possession taken by the heir, and where the possession of the estate is in the hands of the executor, the prescription of three months against that action does not run. *Ib.*

31. Where the executor has filed a final account, which is opposed by one of the heirs on a claim he holds against the succession, the opposition should not be dismissed upon the ground that the opposing heir should resort to an ordinary suit against the other heirs. It is a succession case to which the parties are not entiled to a trial by jury. *Succession of Bozant*, 709.

32. The sale by executory process of the property of a succession before any one was authorized to represent the succession, is null. *Andrews* v. *City Bank of New Orleans*, 737.

33. Where a wife, acting as administratrix, refuses to have placed on the inventory of the succession property which she claims as her own, she cannot be proceeded against by rule to compel her to do so. An ordinary action must be resorted to. *Succession of McKinney*, 748.

34. Where the claim of one as a creditor is denied, he has no right under the act of 13th of March, 1837, to have a judgment against an administration for damages for not having deposited the funds of the succession in bank, and cannot disturb the administration in which those who are interested have acquiesced. *Succession of Connolly*, 753.

SURETY.

1. The surety who has paid a debt, for which the creditor subsequently to the creation of the obligation took a mortgage upon the property of the principal debtor, is entitled by subrogation to the mortgage rights of the creditor. The payment by the surety is the purchase of the rights of the creditor, such as they exist at the date of the payment. *Scott & Dunbar* v. *Featherston & Amis*, 306.

2. Sureties are not entitled to the benefit of the discussion of the principal's property, unless they have furnished a sufficient sum to carry the discussion into effect. *Whiting and Wife* v. *Hagerty et al.* 686.

See also APPEAL.

TAX.

1 The act of 10th of March, 1845, authorizing the sale of property for the payment of taxes, was prospective in its character, and did not authorize the summary proceedings therein provided for the collection of taxes due in 1844. *Elbridge* v. *Tibbitts*, 380.

2. Where the charter of a bank exempts the stock and real estate of the bank from any tax laid by the State, parish, or any body politic or corporate, a tax imposed by Municipality Number One on the real estate of the bank is in direct conflict with the charter, and illegal. Such an exemption is not repealed by the art. 127 of the Constitution. *Municipality Number One* v. *Louisiana State Bank*, 394.

3. A special tax levied by the police jury for the levees upon the lands of persons in the district, is not unconstitutional because of its not being an *ad valorem* tax. *Gillespie* v. *Police Jury of Concordia*, 403.

4. Where lands have been sold under the act of 10th March, 1845, to pay taxes, the owner has a right to redeem the same upon offering to pay to the purchaser the price, costs, improvements and interest, and is not compelled to make a tender of the money unless the purchaser has rendered an account of those items. *Brooks* v. *Hardwick et al.* 675.

TESTAMENTS.

See DONATIONS, MORTIS CAUSA.

TRESPASS.

See DAMAGES, EX DELICTO.

TUTORSHIP.

See Minors.

USUFRUCT.

See Donations, Mortis Causa.

USURY.

See Interest.

WARRANTY.

See Sale.

WIFE.

See Husband and Wife.

WILLS.

See Donations, Mortis Causa.

WORKMEN.

See Letting of Labor, &c.